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SOURCE PROBLEMS
IN UNITED STATES HISTORY

HARPER'S PARALLEL
SOURCE PROBLEM SERIES

SOURCE PROBLEMS IN UNITED STATES HISTORY
SOURCE PROBLEMS IN ENGLISH HISTORY
SOURCE PROBLEMS IN MEDIÆVAL HISTORY
SOURCE PROBLEMS OF THE FRENCH REVOLUTION

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HARPER'S PARALLEL SOURCE PROBLEMS

SOURCE PROBLEMS IN UNITED STATES HISTORY

BY

ANDREW C. McLAUGHLIN

WILLIAM E. DODD

MARCUS W. JERNEGAN

ARTHUR P. SCOTT

OF THE DEPARTMENT OF HISTORY
OF THE UNIVERSITY OF CHICAGO



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PREFACE

FIVE of the seven problems here presented for study are of very profound significance in American history. It would be difficult, if not impossible, to find others of equal importance: the development of religious liberty, discussions of the Revolutionary period which foreshadow the establishment of our Constitution, the historical origin of the wide and peculiar authority of our courts, sectionalism as it showed itself in suspicion and jealousy between East and West, slavery and sectional views on slavery. All students of American history probably would agree that, if we should thoroughly understand these things, we should get pretty near the heart of American history. In preparing these studies we have felt that it is desirable to show, as far as space permits, differing points of view and conflicting tendencies; but we have not thought it necessary or desirable to gather pieces of conflicting testimony concerning particular events. The sources show, as nothing else can, the emergence of institutions and forms of thinking or the gradual preparation for final decision of some social question; they illustrate and demonstrate the play of counter cur-

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rents, and that things of real moment do not just happen. As American history is the history of the working-out of great problems of human relationship and of political order, the sources selected for intensive study in a book of this kind should help the intelligent understanding of those fundamental movements. We believe, then, that the careful examination of these sources will be of great value, not so much to serve for an incidental class exercise, as to enable the student to see and understand the vital social and political controversies of American history. He will see things come to pass as the result of human endeavor and that important things are products of differences of opinion.

Two of the problems are chosen partly because of their continuing interest, partly because they give exceptional opportunity to weigh evidence and to ponder probability. Of these, the first has to do with the beginnings of actual warfare at Lexington, the other with negotiations and conferences preceding the Civil War. Both, it is expected, will enable the student to get a clearer view than is possible by the mere study of text-books or of segregated sources, of the problems the historian has to face in deciding for himself the truth or falsity of an alleged occurrence.

It is hoped that, by the aid of the questions, which we have sought to present in considerable number, the sources can be used without marked

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difficulty. Possibly such problems as these may not be grasped in their fullest meaning; it is hard for any of us to grasp with complete comprehension all the bearings of an historical controversy. But the thought and the application required for successful work on these problems is surely no greater than that required in getting the meaning of an oration of Cicero or in solving the perplexities of advanced school algebra. This certainly may be said—the understanding of these problems is worth while, if one would know American history. The result of study is not a mere abstraction unrelated to life.

Problems II and III were prepared by Mr. McLaughlin, Problem VI by Mr. Dodd, Problems IV and V by Mr. Jerneagan, and Problems I and VII by Mr. Scott.

PROBLEM I

I.—The Battle of Lexington

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The Battle of Lexington

I. THE HISTORICAL SETTING OF THE PROBLEM

THE War for American Independence began on April 19, 1775, with a clash between British troops and a company of Massachusetts militia at Lexington. This fact makes the events of that day forever memorable, and lends them an importance that overshadows the material results of the affair. Of course in any broad view of history a knowledge of the details of this engagement is insignificant as compared with an understanding of the forces which for years had been leading up to some sort of armed collision between the British Government and the dissatisfied element in the Colonies (see Study II). It is far more important to know why both sides were preparing to use force than it is to determine the exact incidents by which war was precipitated. Still further, with regard to the events at Lexington, there is a sense in which what actually occurred is less important than what both sides thought and said had happened. As a matter of fact, two radically different versions of the

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encounter became current, both based on the testimony of eye-witnesses. On the crucial question as to who fired the first shot the testimony was flatly contradictory, each side laying the blame on the other. At the time, because of its possible effect on public opinion, this was a point of decided importance. Each side believed that the other had been the aggressor, and felt outraged accordingly.

In later years, an attempt was made to belittle the whole affair at Lexington, in order to claim for Concord the honor of having made the first organized armed resistance to British tyranny.

For the present-day student, all such questions are of minor importance. The study of the parallel accounts, however, may be made a very profitable exercise in historical criticism, and it is for this reason that they are included in the present volume. The material has been selected primarily in order to present all the available evidence as to which side fired the first shot; but a general account of the whole day's events can be reconstructed from the extracts. The problems raised are the same in kind as those which confront the writer of history at every turn, and the processes involved in comparing, criticizing, and reconciling these statements are essentially those which must be followed in the search for all historical truth.

Writers on historical criticism have drawn up elaborate rules for determining the value of evidence. In general such rules simply formulate principles of common sense that we apply more or less unconsciously in daily life. A few of them, however, might be recalled. As a preliminary, the student should always try to make allowance for his own sympathies and inclinations. It is hard at times not to believe that those witnesses are most reliable whose testimony best fits in with our own beliefs. In the present case, we should not start with the

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idea that the British were brutal aggressors, and therefore presumably liars.

In estimating evidence, we generally assume that the certainty of our knowledge of an event increases with the number of actual witnesses who agree in their descriptions of that event; and where there is a conflict of testimony we often presume that statements made by the larger number of witnesses are more likely to be true. Counting witnesses on either side, however, is usually of less importance than weighing them, determining, that is, the relative value of each one's testimony. In this connection several critical questions suggest themselves at once.

We naturally wish to know, (1) What opportunity did each witness have for learning the truth? Was he a participant in the events described? Was he a spectator? Or did he get his information from eye-witnesses, or only from hearsay? We also try to determine, (2) What possible motives existed for downright falsehood, or for twisting or coloring the truth, or for suppressing part of it, or for misinterpreting facts? How probable is it that each particular witness would be affected by any of these motives? It is also safe to ask, (3) What are the possibilities for honest mistakes or for self-deception on the part of any witness? How soon after the event was the record made?

In working out the source problem presented by the Lexington material, all of these questions are pertinent and in many cases they can be satisfactorily answered. It is unwise, however, to press evidence too far. The student is not bound to come to positive conclusions on all points. Sometimes one should simply say, "The weight of evidence seems to favor such and such a conclusion." Sometimes one should admit that the evidence is so confused, or so nicely balanced, that no positive conclusions are safe.

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The questions are offered as suggestions to direct the attention of the student to various points involved in the material. Independent thinking on these questions might profitably be followed by discussions in class. The student should conclude his work by writing a narrative of the events of April 18-19, with particular reference to the Lexington affair. Foot-notes and references to sources should be added.

II. INTRODUCTIONS TO THE SOURCES

1. *American Archives: consisting of a Collection of authentick records, state papers, debates, and letters and other notices of public affairs, the whole forming a documentary history of the origin and progress of the North American Colonies; of the causes and accomplishment of the American Revolution; and of the Constitution of government for the United States, to the final ratification thereof. In six series. American Archives: Fourth Series containing a documentary history of the English Colonies in North America, from the King's Message to Parliament, of March 7, 1774, to the Declaration of Independence by the United States. Peter Force, editor. Washington, 1837. (Quoted as Force's Archives.)*

In Series IV, Vol. II, of Force's *Archives* are reprinted nearly all of the more important contemporary accounts of Lexington. From the material in this volume the following extracts are taken: (figures refer to columns, which are numbered separately).

(1) 363. Letter of Massachusetts Committee of Safety, sent by express riders to alarm the country. This and the following extract show the form in which the news of Lexington reached the other Colonies. The first report reached New York on April 23d, and Charleston, South Carolina, on May 8th. (Source 1.)

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(2) 370. "The Committee of Safety of Massachusetts to the Governor of Connecticut." Account of Lexington and Concord, written April 20th, and asking for military assistance. (Source 2.)

(3) 360. "Extract of a Letter from Boston to a Gentleman in New York, dated April 20, 1775." Force does not give his reference. Probably the letter was printed in some contemporary newspaper. It shows the form in which the first rumors of the fight reached Boston. (Source 3.)

(4) 391. Account dated Salem, April 25, 1775. From the *Salem Gazette*. (Source 9.)

(5) 487-501. The Massachusetts Provincial Congress to the Inhabitants of Great Britain, April 26th. Realizing the gravity of the events of April 19th, the Massachusetts leaders at once collected testimony under oath, chiefly from those present at Lexington. Their interpretation of this evidence, with the depositions appended, was hurried off to Franklin in England by a fast ship. It arrived eleven days before Gage's official account, which had been sent earlier. This priority was of some advantage in impressing the colonial version on the British public. (Sources 10, 11.)

(6) 625. "An Account of the Commencement of Hostilities between Great Britain and America, in the Province of the Massachusetts-Bay. By the Reverend Mr. William Gordon of Roxbury, in a Letter to a Gentleman in England, dated May 17, 1775." This letter was obviously intended for the public, and was accordingly printed in two Massachusetts Almanacs for 1776.

Gordon was a dissenting English minister, who had been settled for some years in Massachusetts. After the war he returned to England and wrote a History of the Revolution, which for a long time enjoyed a considerable reputation. His sympathies were distinctly with the Colonists. (Source 12.)

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(7) 673. "A Narrative of the Excursion and Ravages of the King's Troops, under the command of General Gage, on the nineteenth of April, 1775; together with the Depositions taken by order of Congress to support the truth of it. Published by authority." This is the account drawn up by the Massachusetts Congress and forwarded to the Continental Congress. It corresponds closely with the account sent to England. The same depositions are appended, with three new ones added to refute the "scalping" stories, and to reinforce the charges of British atrocities. (Sources 13, 14.)

2. *Atlantic Monthly*, April, 1877. "Diary of a British Officer in Boston." The writer of this diary cannot be identified with certainty, but there is no doubt that it is authentic. (Source 8.)

3. *Literary Diary of Ezra Stiles*, F. B. Dexter, editor. (New York, 1901.)

I, 604-5. Under date of August 21, 1775, Stiles gives Major Pitcairn's version of the beginning of the affair at Lexington. Stiles was a prominent clergyman, then a pastor in Newport. (Source 6.)

4. *Massachusetts Historical Society, Proceedings* (1876, p. 359, note).

Report of Lieutenant-Colonel Smith, commanding the British expedition, made to Governor Gage. The report of Lord Percy, in command of the relieving column, appears on p. 349. It is not included in this study. (Source 4.)

5. *Massachusetts Historical Society, Collections*.

Second Series, Vol. IV, p. 204. Account written by Ensign D'Bernicre, a British Officer in the Tenth Regiment. The manuscript was found after the British had evacuated Boston, and was printed in Boston in 1779. (Source 7.)

6. *Memorial History of Boston, 1630-1880*, Justin Winsor, editor. Four vols. (Boston, 1880-1881.)

Vol. III, p. 73. "A Circumstantial Account Of an

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Attack that happened on the 19th of April 1775, on his Majesty's Troops, By a Number of the People of the Province of Massachusetts-Bay." This is a facsimile of the broadside giving the official British version of the affair, printed presumably by order of Gage, and circulated within a few days of April 19th. With slight verbal changes this is also reprinted in Force's *Archives*, IV, 2, 435. (Source 5.)

7. *History of the Battle of Lexington*, by Elias Phinney. (Boston, 1825.)

(1) Extract from Introduction, showing the intention of refuting the claims that the first organized resistance was made not at Lexington but Concord. (2) Appendix, giving the depositions of the survivors of the battle, taken in 1825, emphasizing the shots fired by the militia after the British had fired. (Sources 15, 16.)

8. *Life and Correspondence of Theodore Parker*, by John Weiss. (New York, 1864.)

Vol. II, p. 12. Letter from Parker to George Bancroft, September 10, 1858. Rev. Theodore Parker was a grandson of Captain Parker, who commanded the militia at Lexington. This letter gives the version of the fight as it was handed down in the Parker family. Another letter of February 16, 1858, to J. F. Loring, printed in the *Historical Magazine*, 1st Series, 4:202, gives a few more details. (Source 17.)

III. QUESTIONS AND SUGGESTIONS FOR STUDY

(The student in all cases should be prepared to give the exact references to sources justifying his answers.)

1. What connected accounts on each side seem to you of most importance? Why?
2. What was the fundamental point on which the accounts differed? Why was it important?

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3. Why do the contemporary American accounts emphasize the dispersing of the Lexington company? Were they anxious to emphasize their own resistance?
4. What statements in extracts 1, 2, 3 are not confirmed by the rest of the evidence?
5. What is the difference in emphasis between the American depositions of 1775 and 1825? Why is this? How does it affect their value? In what fundamental points do the two sets agree? Are there statements which contradict each other? If so, which are we to prefer?
6. What commands did Captain Parker give to his company? At what stage (with reference to the action of the British) was each command given?
7. Did Captain Parker order his men to stand their ground and not to fire unless fired upon? If so, why do you suppose that this was not mentioned in 1775?
8. Did he add "But if they mean to have a war, let it begin here"? If so, why is it not mentioned in the depositions of 1775? in those of 1825? If not, how may the insertion of these words into the Lexington story be accounted for?
9. Had the militia all assembled when the firing began? Had some begun to disperse? What evidence is there that the militia fired at all? About how many shots were fired by them and with what effect?
10. Should you say that the action of the Lexington company marked the beginning of armed and organized resistance to Britain? Explain.
11. How do you account for the similarities of phrasing of parts of the American depositions? How does this affect their value?
12. Who was in immediate command of the British at Lexington? What, in substance, did he say to the militia? Did he receive any reply? What orders did he give his men? Did he, or any other officer, order the troops to fire? If so, when?
13. Was Lieutenant-Colonel Smith present at the Lexington affair? If so, when did he arrive?

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14. What was Major Pitcairn's general reputation? On seeing the militia, what were his intentions? Did he sincerely believe that the Americans had fired first?
15. What do you think of the suggestion that the British impression that the Americans fired first was based upon an alarm gun being fired, or flashing in the pan?
16. What allowances should be made for the testimony of the captured British?
17. What do you think is the value of Gordon's account? To which of his conclusions would you object? Why?
18. On what information is the official British account based? (5). Compare it with Smith's report. Where did the additional items probably come from?
19. How authentic does the *Salem Gazette* account appear? (9).
20. Trace the origin of the story that the Americans killed and scalped the wounded. In what respect is the deposition of Brown and Davis (14c) misleading?
21. What evidence is there that the British troops destroyed and looted?
22. How far are the statements regarding outrageous treatment of women and murder of unoffending old men (10, 11, 13, 14) borne out? How far would you regard the American charges as exaggerated?
23. Were the Americans technically "rebels"? What is supposed to be the fate of houses from which ununiformed "rebels" fire at troops?
24. Put yourself in the position of a British official considering the expedition to Concord, and state the considerations (a) of legal right and (b) of expediency in favor of such an expedition. (Draw on material from Study II.)
25. Draw up a corresponding summary from the American point of view as to armed resistance to the expedition. (See Study II.)
26. In drawing conclusions from the testimony as to the Lexington affair, what allowance, if any, do you think should be made for: (a) darkness; (b) distance of witnesses from the center of activities, or inability to get an unobstructed view; (c) excitement of witnesses at the

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time; (d) confusion caused by rushing up of militia and spectators, advancing and deploying of troops, dispersing of militia and spectators; (e) desire to prove the other side at fault; (f) unconscious changing of details in talking the matter over afterward; (g) suggestion of details by hearing the testimony of others, or by having a form of deposition offered for signature.

27. Write a connected account of the events of April 18-19, with particular reference to the events at Lexington. Give references to the sources for every statement of fact. Give briefly your reasons for your conclusions on debatable points. (For the form of foot-notes, follow some standard history, as Channing, *History of the United States*, or one of the *American Nation* series.)
28. After you have finished your own study, examine the accounts of Lexington in several of the histories at hand, including books by English authors. Try to determine the sources used by each. Criticize the accounts which seem inaccurate or biased.

IV. The Sources

1. Force's *Archives*, Series IV, Vol. II, col. 363.
[The form in which news of Lexington first reached the other Colonies.]

WATERTOWN, Wednesday morning,
Near ten o'clock, *April 19, 1775.*

TO ALL FRIENDS OF AMERICAN LIBERTY LET IT
BE KNOWN:

That this morning before break of day, a Brigade, consisting of about one thousand or twelve hundred men, landed at *Phipps's* farm at *Cambridge*, and marched to *Lexington*, where they found a Company of our Colony Militia in arms, upon whom they fired without any provocation, and killed six men and wounded four others. By an express from *Boston* we find another Brigade are upon their march from *Boston*, supposed to be about one thousand. The bearer, *Israel Bessel*, is charged to alarm the Country quite to *Connecticut*, and all persons are desired to furnish him with fresh horses as they may be needed. I have spoken with several who have seen the dead and wounded. Pray let the Delegates from this Colony to *Connecticut* see this;

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they know Colonel *Foster*, of *Brookfield*, one of our Delegates.

T. PALMER

One of the Committee for Safety.

- 5 2. Col. 370. [Massachusetts Committee of Safety to the Governor of Connecticut.]¹

CAMBRIDGE, *April 20, 1775.*

On Wednesday, the 19th instant, early in the morning, a detachment of General Gage's Army
10 marched into the Country to Lexington, about thirteen miles from Boston, where they met with a small party of Minute-men, exercising, who had no intention of doing any injury to the Regulars. But they fired upon our men without any provocation,
15 killed eight of them the first onset, then marched forward to Concord, where they destroyed the Magazines and Stores for a considerable time. . . . As the Troops have now commenced hostilities, we think it our duty to exert our utmost strength to
20 save our Country from absolute slavery. . . .

3. Col. 359-60. [This "Extract of a Letter to a Gentleman near Philadelphia, Dated Boston, April 20, 1775," was presumably taken by Force from a contemporary newspaper.]
25 . . . The first advice we had was about eight o'clock in the morning, when it was reported that the Troops had fired upon and killed five men in Lexing-

¹In the following selections the original italics for proper nouns are omitted.

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ton. . . . About twelve o'clock it was given out by the General's Aid-de-Camp that no person was killed and that a single gun had not been fired, which report was variously believed; but, between one and
5 two o'clock, certain accounts came that eight were killed outright, and fourteen wounded of the inhabitants of Lexington. Those people, it seems, to the number of about forty, were drawn out early in the morning near the Meeting-House to exercise;
10 upon which the party of Light-Infantry and Grenadiers, to the number of about eight hundred, came up to them and ordered them to disperse. The commander replied that they were innocently amusing themselves with exercise, that they had not
15 any ammunition with them, and therefore should not molest or disturb them. This answer not satisfying, the Troops fired upon them, and killed three or four; the others took to their heels, and the Troops continued to fire. A few took refuge in the
20 Meeting-House, when the soldiers shoved up the windows, pointed their guns in, and killed three there. This is the best account I can learn of the beginning of the fatal day, and you must naturally suppose that such a piece of cruelty would arouse
25 the Country. . . . [On the retreat] it is conjectured that one half of the soldiers at least are killed.

4. *Massachusetts Historical Society, Proceedings*, 1876, 350, note. [Report of Lieutenant-Colonel Smith to Governor Gage.]

Source Problems in United States History

BOSTON, *April 22, 1775.*

SIR,—In obedience to your Excellency's commands, I marched on the evening of the 18th inst. with the corps of grenadiers and light infantry for
5 Concord, to execute your Excellency's orders with respect to destroying all ammunition, artillery, tents, &c., collected there, which was effected, having knocked off the trunnions of three pieces of iron ordnance, some new gun-carriages, a great number
10 of carriage-wheels burnt, a considerable quantity of flour, some gun-powder and musquet-balls, with other small articles thrown into the river. Notwithstanding we marched with the utmost expedition and secrecy, we found the country had intelligence or
15 strong suspicion of our coming, and fired many signal guns, and rung the alarm bells repeatedly; and were informed, when at Concord, that some cannon had been taken out of the town that day, that others, with some stores, had been carried three
20 days before, which prevented our having an opportunity of destroying so much as might have been expected at our first setting off.

I think it proper to observe, that when I had got some miles on the march from Boston, I detached
25 six light infantry companies to march with all expedition to seize the two bridges on different roads beyond Concord. On these companies' arrival at Lexington, I understand, from the report of Major Pitcairn, who was with them, and from many officers,

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that they found on a green close to the road a body of the country people drawn up in military order, with arms and accoutrements, and, as appeared after, loaded; and that they had posted some men in a dwelling and Meeting-house. Our troops advanced towards them, without any intention of injuring them, further than to inquire the reason of their being thus assembled, and, if not satisfactory, to have secured their arms; but they in confusion went off, principally to the left, only one of them fired before he went off, and three or four more jumped over a wall and fired from behind it among the soldiers; on which the troops returned it, and killed several of them. They likewise fired on the soldiers from the Meeting and dwelling-house. We had one man wounded, and Major Pitcairn's horse shot in two places. Rather earlier than this, on the road, a countryman from behind a wall had snapped his piece at Lieutenants Adair and Sutherland, but it flashed and did not go off. After this we saw some in the woods, but marched on to Concord without anything further happening. While at Concord we saw vast numbers assembling in many parts; at one of the bridges they marched down, with a very considerable body, on the light infantry posted there. On their coming pretty near, one of our men fired on them, which they returned; on which an action ensued, and some few were killed and wounded. In this affair, it appears that, after the bridge was

Source Problems in United States History

quitted, they scalped and otherwise ill-treated one or two of the men who were either killed or severely wounded, being seen by a party that marched by soon after. At Concord we found very few inhabitants in the town; those we met with both Major Pitcairn and myself took all possible pains to convince that we meant them no injury, and that if they opened their doors when required to search for military stores, not the slightest mischief would be done. We had opportunities of convincing them of our good intentions, but they were sulky; and one of them even struck Major Pitcairn. On our leaving Concord to return to Boston, they began to fire on us from behind the walls, ditches, trees, &c., which, as we marched, increased to a very great degree, and continued without the intermission of five minutes altogether, for, I believe, upwards of eighteen miles; so that I can't think but it must have been a preconcerted scheme in them, to attack the King's troops the first favourable opportunity that offered, otherwise, I think they could not, in so short a time from our marching out, have raised such a numerous body, and for so great a space of ground. Notwithstanding the enemy's numbers, they did not make one gallant attempt during so long an action, though our men were so very much fatigued, but kept under cover.

I have the honour, &c.,

F. SMITH, Lieutenant-Colonel 10th Foot,

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5. *Memorial History of Boston*, Justin Winsor, editor, III, 73.

A Circumstantial Account of an Attack that happened on the 19th of April, 1775, on his Majesty's Troops, By a Number of the People of the Province of Massachusetts-Bay.

On Tuesday the 18th of April, about half past 10 at Night, Lieutenant Colonel Smith of the 10th Regiment, embarked from the Common at Boston, with the Grenadiers and Light Infantry of the Troops there, and landed on the opposite Side, from whence he began his March towards Concord, where he was ordered to destroy a Magazine of Military Stores, deposited there for the Use of an Army to be assembled, in Order to act against his Majesty, and his Government. The Colonel called his Officers together, and gave Orders, that the Troops should not fire, unless fired upon, and after marching a few Miles, detached six Companies of Light Infantry, under the Command of Major Pitcairn, to take Possession of two Bridges on the other Side of Concord: Soon after they heard many Signal Guns, and the ringing of Alarm Bells repeatedly, which convinced them that the Country was rising to oppose them, and that it was a preconcerted Scheme to oppose the King's Troops, whenever there should be a favorable Opportunity for it. About 3 o'Clock the next Morning, the Troops being advanced within two Miles of Lexington, Intelligence was received

Source Problems in United States History

that about Five Hundred Men in Arms, were assembled, and determined to oppose the King's Troops; [foot-note, in original]: (At this Time the advanced Light Companies loaded, but the Grenadiers were
5 not loaded when they received the first fire.) and on Major Pitcairn's galloping up to the Head of the advanced Companies, two Officers informed him that a Man advanced from those that were assembled had presented his Musquit and attempted to
10 shoot them, but the Piece flashed in the Pan. On this the Major gave directions to the Troops to move forward, but on no Account to fire, nor even to attempt it without Orders. When they arrived at the End of the Village, they observed about 200
15 armed Men, drawn up on a Green, and when the Troops came within a Hundred Yards of them, they began to file off towards some Stone Walls, on their right Flank. The Light Infantry observing this, ran after them: the Major instantly called to the
20 Soldiers not to fire, but to surround and disarm them, some of them who had jumped over a Wall, then fired four or five Shot at the Troops, wounded a man of the 10th Regiment, and the Major's Horse in two Places, and at the same Time
25 several Shots were fired from a Meeting House on the Left. [Note, in original]: (Notwithstanding the Fire from the Meeting House Colonel Smith and Major Pitcairn with the Greatest Difficulty kept the Soldiers from forcing into the Meeting House and

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putting all those in it to Death.) [After describing the fight at Concord the account proceeds]: When Captain Parsons returned with the three Companies over the Bridge, they observed three
5 Soldiers on the Ground one of them scalped, his Head much mangled, and his Ears cut off, tho not quite dead; a Sight which struck the Soldiers with Horror. [The retreat is then described. The account closes]: The Troops had about Fifty killed,
10 and many more wounded. Reports are various about the Loss sustained by the Country People, some make it very considerable, others not so much.

Thus the unfortunate Affair has happened through
15 the Rashness and Imprudence of a few People, who began Firing on the Troops at Lexington.

6. The Literary Diary of Ezra Stiles, F. B. Dexter, editor, I, 604-5.

Major Pitcairn who was a good Man in a bad
20 Cause, insisted upon it to the day of his Death,¹ that the Colonists fired first: & that he commanded not to fire & endeavored to stay & stop the firing after it began: But then he told this with such Circumstances as convince me that he was deceived tho'
25 on the spot. *He does not say that he saw the Colonists fire first.* Had he said it, I would have believed him, being a Man of Integrity & Honor. *He expressly says he did not see who fired first;* and yet believed the

¹ He was killed at Bunker Hill.

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Peasants began. His acc^o is this—that riding up to them he ordered them to disperse; which they not doing instantly, he turned about to order his Troops so to draw out as to surround and disarm them. As
5 he turned he *saw* a Gun in a Peasants hand from behind a Wall, *flash in the pan without going off*: and instantly or very soon 2 or 3 Guns went off by which *he found his Horse wounded & also a man near him wounded. These Guns he did not see*, but believ^g they
10 could not come from his own p[eo]ple, *doubted not* so asserted that they came from our p[eo]ple; & that thus they began the Attack. The Impetuosity of the Kings Troops were [*sic*] such that a promiscuous, uncommanded but general Fire took place,
15 which Pitcairn could not prevent; tho' he struck his staff or Sword downwards with all Earnestness as the signal to forbear or cease firing.¹ This Acc^o Major Pitcairn himself gave M^r Brown of Providence . . . ; and Gov. Sessions told it to me.

- 20 7. *Massachusetts Historical Society, Collections, Series II, Vol. IV, 216.* [Account by a British officer, Ensign D'Bernicre, of the 10th Foot.]
. . . The troops received no interruption in their march until they arrived at Lexington, a town eleven
25 miles from Boston, where there were about 150 rebels drawn out in divisions, with intervals as wide as the front of the divisions; the light-infantry who marched in front halted, and Major Pitcairn came

¹ Compare Fessenden's account in 11 (*l*) below.

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up immediately and cried out to the rebels to throw down their arms and disperse, which they did not do; he called out a second time, but to no purpose; upon which he ordered our light-infantry to advance and disarm them, which they were doing, when one of the rebels fired a shot, our soldiers returned the fire and killed about fourteen of them; there was only one of the 10th light-infantry received a shot through his leg; some of them got into the church and fired from it, but were soon drove out. We then continued our march for Concord. . . .

8. *Atlantic Monthly*, April, 1877, p. 398. [From the diary of a British officer, under date April 19, 1775.]

. . . At 2 o'clock we began our March by wading through a very long ford up to our Middles: after going a few miles we took 3 or 4 people who were going off to give intelligence; about 5 miles on this side of a Town called Lexington, which lay in our road, we heard there were some hundreds of People collected together intending to oppose us and stop our going on; at 5 o'clock we arrived there and saw a number of People, I believe between 2 and 300, formed in a Common in the middle of the Town; we still continued advancing, keeping prepared against an attack tho' without intending to attack them; but on our coming near them they fired one or two shots, upon which our Men without any orders rushed in upon them, fired and put 'em to

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flight; several of them were killed, we cou'd not tell how many, because they were got behind Walls and into the Woods; We had a man of the 10th light Infantry wounded, nobody else hurt. We then
5 formed on the Common, but with some difficulty, the Men were so wild they cou'd hear no orders. . . . [After the Concord fight, the retreat began. After Percy's relieving force had come] we were now obliged to force almost every house in the road, for the
10 Rebels had taken possession of them and galled us exceedingly; but they suffered for their temerity, for all that were found in the houses were put to death. . . .

p. 544 [under date of April 25].

15 Our Soldiers the other day, tho' they shew'd no want of courage, yet were so wild and irregular, that there was no keeping 'em in any order; by their eagerness and inattention they kill'd many of our own People, and the plundering was shamefull; many
20 hardly thought of anything else; what was worse, they were encouraged by some Officers. . . .

9. Force's *Archives*, Series IV, Vol. II, col. 391.

[Account in the *Salem Gazette*, April 25, 1775.]

Last Wednesday the 19th of April, the Troops of
25 His Britannick Majesty commenced hostilities upon the people of this Province, attended with circumstances of cruelty, no less brutal than what our venerable ancestors received from the vilest Savages of the wilderness. The particulars relative to this

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interesting event, by which we are involved in all the horrors of a civil war, we have endeavoured to collect as well as the present confused state of affairs will admit. . . . [Describes the start of the
5 British.]

At Lexington, six miles below Concord, a company of Militia, of about one hundred men, mustered near the Meeting-House; the Troops came in sight of them just before sunrise; and running within a
10 few rods of them, the Commanding Officer accosted the Militia in words to this effect: "Disperse, you rebels—damn you, thrown down your arms and disperse;" upon which the Troops huzzaed, and immediately one or two officers discharged their pistols,
15 which were instantaneously followed by the firing of four or five of the soldiers, and then there seemed to be a general discharge from the whole body: eight of our men were killed and nine wounded. . . . [On the retreat from Concord] they pillaged almost
20 every house they passed by, breaking and destroying doors, windows, glasses, &c., and carrying off clothing and other valuable effects. It appeared to be their design to burn and destroy all before them; and nothing but our vigorous pursuit prevented
25 their infernal purposes from being put in execution. But the savage barbarity exercised upon the bodies of our unfortunate brethren who fell, is almost incredible: not contented with shooting down the unarmed, aged, and infirm, they disregarded the

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cries of the wounded, killing them without mercy, and mangling their bodies in the most shocking manner.

We have the pleasure to say, that, notwithstanding the highest provocations given by the enemy, not one instance of cruelty, that we have heard of, was committed by our victorious Militia; but, listening to the merciful dictates of the Christian religion, they "breathed higher sentiments of humanity." . . .
10 10. Col. 487. [Account drawn up by the Provincial Congress, Watertown, April 26th, based on the depositions appended.]

TO THE INHABITANTS OF GREAT BRITAIN:

FRIENDS AND FELLOW-SUBJECTS: Hostilities are
15 at length commenced in this Colony by the Troops under command of General Gage; and it being of the greatest importance that an early, true, and authentick account of this inhuman proceeding should be known to you, the Congress of this Colony
20 have transmitted the same, and from want of a session of the honourable Continental Congress, think it proper to address you on the alarming occasion.

By the clearest depositions relative to this transaction, it will appear that on the night preceding
25 the nineteenth of April instant, a body of the King's Troops, under command of Colonel Smith, were secretly landed at Cambridge, with an apparent design to take or destroy the military and other

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stores provided for the defence of this Colony, and deposited at Concord; that some inhabitants of the Colony, on the night aforesaid, whilst travelling peaceably on the road between Morton and Concord, were seized and greatly abused by several armed men, who appeared to be officers of General Gage's Army; that the Town of Lexington by these means was alarmed, and a company of the inhabitants mustered on the occasion; that the Regular Troops, on their way to Concord, marched into the said Town of Lexington, and the said Company, on their approach, began to disperse; that notwithstanding this, the Regulars rushed on with great violence, and first began hostilities by firing on said Lexington Company, whereby they killed eight and wounded several others; that the Regulars continued their fire until those of said Company, who were neither killed nor wounded, had made their escape; that Colonel Smith, with the detachment, then marched to Concord, where a number of Provincials were again fired on by the Troops, two of them killed, and several wounded, before the Provincials fired on them; and that these hostile measures of the Troops produced an engagement that lasted through the day, in which many of the Provincials, and more of the regular Troops, were killed and wounded.

To give a particular account of the ravages of the troops as they retreated from Concord to Charles-

Source Problems in United States History

town, would be very difficult, if not impracticable; let it suffice to say, that a great number of the houses on the road were plundered and rendered unfit for use; several were burnt; women in child-
5 bed were driven by the soldiery naked into the streets; old men, peaceably in their houses, were shot dead; and such scenes exhibited as would disgrace the annals of the most uncivilized Nation. . . .

11. [Depositions, taken under oath, added to the
10 account by the Provincial Congress.]

(a) Col. 489. [Testimony of Elijah Sanderson, April 25, 1775.]

. . . I was in Lexington Common the morning of the nineteenth of April aforesaid, having been dis-
15 missed by the officers above-mentioned, and saw a large body of Regular Troops advancing towards Lexington Company, many of whom were then dispersing. I heard one of the Regulars, whom I took to be an officer, say, "damn them, we will have
20 them;" and immediately the Regulars shouted aloud, run, and fired on the Lexington Company, which did not fire a gun before the Regulars discharged on them. Eight of the Lexington Company were killed while they were dispersing, and at con-
25 siderable distance from each other, and many wounded; and although a spectator, I narrowly escaped with my life.

(b) Col. 489. [Testimony of Thomas Price Willard, April 23d.]

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. . . Being in the house of Daniel Harrington, of said Lexington, on the nineteenth instant, in the morning, about half an hour before sunrise, [I] looked out of the window of said house and saw (as I suppose) about four hundred of Regulars, in one body, coming up the road, and marched toward the north part of the common, back of the meeting-house of said Lexington; and as soon as said Regulars were against the east end of the meeting-house, the commanding officers said something, what I know not; but upon that the Regulars ran till they came within about eight or nine rods of about a hundred of the Militia of Lexington, who were collected on said common, at which time the Militia of Lexington dispersed; then the officers made a huzza, and the private soldiers succeeded them. Directly after this an officer rode before the Regulars to the other side of the body, and hallooed after the Militia of said Lexington, and said, "Lay down your arms, damn you; why don't you lay down your arms?" and that there was not a gun fired till the Militia of Lexington were dispersed.

(c) Col. 490. [Simon Winship deposes, April 25th, that he was stopped by the troops and forced to march toward Lexington with them.]

Said Winship further testifies that he marched with said Troops until he came within about half a quarter of a mile of said meeting-house, where an officer commanded the Troops to halt, and then to

Source Problems in United States History

prime and load. This being done, the said Troops marched on till they came within a few rods of Captain Parker's Company, who were partly collected on the place of parade, when said Winship observed an officer at the head of said Troops flourishing his sword, and with a loud voice giving the word fire; which was instantly followed by a discharge of arms from said Regular Troops. And said Winship is positive, and in the most solemn manner declares, that there was no discharge of arms on either side till the word fire was given by said officer as above.

(d) Col. 491. [Deposition of Captain Parker, April 25th.]

I, John Parker, of lawful age, and commander of the Militia in Lexington, do testify and declare, that on the nineteenth instant, in the morning, about one of the clock, being informed that there were a number of Regular Officers riding up and down the road, stopping and insulting people as they passed the road, and also was informed that a number of Regular Troops were on their march from Boston, in order to take the Province Stores at Concord, ordered our Militia to meet on the Common in said Lexington, to consult what to do, and concluded not to be discovered, nor meddle or make with said Regular Troops (if they should approach) unless they should insult us; and upon their sudden approach, I immediately ordered our Militia to disperse and not to fire. Immediately said Troops made their

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appearance, and rushed furiously, fired upon and killed eight of our party, without receiving any provocation therefor from us.

(e) Col. 491. [John Robbins testifies, April 24th]:

On the nineteenth instant, the Company under the command of Captain John Parker being drawn up (sometime before sunrise) on the green or common, and I being in the front rank, there suddenly appeared a number of the King's Troops, about a thousand, as I thought, at the distance of about sixty or seventy yards from us, huzzaing and on a quick pace towards us, with three officers in their front on horseback, and on full gallop towards us; the foremost of which cried, "Throw down your arms, ye villains, ye rebels;" upon which said Company dispersing, the foremost of the three officers ordered their men, saying, "Fire, by God, fire"; at which moment we received a very heavy and close fire from them; at which instant, being wounded, I fell, and several of our men were shot dead by one volley. Captain Parker's men, I believe, had not then fired a gun.

(f) Col. 492. [Benjamin Tidd and Joseph Abbott depose, April 25th]:

. . . That on the morning of the nineteenth of April instant, about five o'clock, being on Lexington common, and mounted on horses, we saw a body of Regular Troops marching up to the Lexing-

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ton Company which was then dispersing. Soon after the Regulars fired first a few guns, which we took to be pistols from some of the Regulars who were mounted on horses, and then the said Regulars
5 fired a volley or two before any guns were fired by the Lexington Company. Our horses immediately started and we rode off.

(g) Col. 492. [The following deposition was signed, April 25th, by thirty-four men]:

10 On the nineteenth of April instant, about one or two o'clock in the morning, being informed that several officers of the Regulars had, the evening before, been riding up and down the road, and had detained and insulted the inhabitants passing the
15 same; and also understanding that a body of Regulars were marching from Boston towards Concord, with intent (as it was supposed) to take the stores belonging to the Colony in that Town, we were alarmed; and having met at the place of our Com-
20 pany's parade, were dismissed by our Captain, John Parker, for the present, with orders to be ready to attend at the beat of the drum. We further testify and declare, that about five o'clock in the morning, hearing our drum beat, we proceeded towards the
25 parade, and soon found that a large body of Troops were marching towards us. Some of our Company were coming up to the parade, and others had reached it; at which time the Company began to disperse. Whilst our backs were turned on the

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Troops we were fired on by them, and a number of our men were instantly killed and wounded. Not a gun was fired by any person in our Company on the Regulars, to our knowledge, before they fired on us, and they continued firing until we had all made our escape.

(h) Col. 493. [April 25th fourteen others sign a deposition, the first part of which is practically identical with the foregoing. They continue]:

We were faced towards the Regulars, then marching up to us, and some of our Company were coming to the Parade with their backs towards the Troops, and others on the parade began to disperse, when the Regulars fired on the Company before a gun was fired by any of our Company on them; they killed eight of our Company, and wounded several, and continued their fire until we had all made our escape.

(i) Col. 494. [Timothy Smith, April 25th, testifies]:

... Being at Lexington common as a spectator, I saw a large body of Regular Troops marching up towards the Lexington Company, then dispersing, and likewise saw the Regular Troops fire on the Lexington Company, before the latter fired a gun. I immediately ran, and a volley was discharged at me, which put me in imminent danger of losing my life. I soon returned to the common, and saw eight of the Lexington men who were killed, and lay bleeding, at a considerable distance from each other, and several were wounded.

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(j) Col. 494. [Levi Harrington and Levi Mead testify, April 25th]:

Being on Lexington Common as spectators, we saw a large body of Regular Troops marching up
5 towards the Lexington Company, and some of the Regulars on horses, whom we took to be officers, fired a pistol or two on the Lexington Company, which was then dispersing. These were the first guns that were fired, and they were immediately
10 followed by several volleys from the Regulars. . . .

(k) Col. 495. [William Draper testifies, April 25th]:

. . . Being on the parade of said Lexington, April 19th instant, about half an hour before sunrise the
15 King's Regular Troops appeared at the meeting-house of Lexington. Captain Parker's Company, who were drawn up back of said meeting-house on the parade, turned from said Troops, making their escape by dispersing; in the mean time the Regular
20 Troops made a huzza and ran towards Captain Parker's Company, who were dispersing, and immediately after the huzza was made the commanding officer of said Troops (as I took him) gave the command to the said Troops: "Fire! fire! damn you,
25 fire!" and immediately they fired before any of Captain Parker's Company fired, I then being within three or four rods of said Regular Troops.

(l) Col. 495. [April 23d Thomas Fessenden deposes that]:

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Being in a pasture near the meeting-house . . . at about half an hour before sunrise, I saw a number of Regular Troops pass speedily by said meeting-house on their way towards a Company of Militia of said Lexington, who were assembled to the number of about one hundred in a Company at the distance of eighteen or twenty rods from said meeting-house, and after they had passed by said meeting-house, I saw three officers on horseback advance to the front of said Regulars, when one of them, being within six rods of the said Militia, cried out "Disperse, you rebels, immediately;" on which he brandished his sword over his head three times; meanwhile the second officer, who was about two rods behind him, fired a pistol pointed at said Militia, and the Regulars kept huzzaing till he had finished brandishing his sword, and when he had thus finished brandishing his sword, he pointed it down towards said Militia, and immediately on which the said Regulars fired a volley at the Militia, and then I ran off as fast as I could, while they continued firing till I got out of their reach. I further testify, that as soon as ever the officer cried "Disperse, you rebels," the said Company of Militia dispersed every way as fast as they could, and while they were dispersing the Regulars kept firing at them incessantly.

(m) Col. 496. [Deposition of a British soldier, captured; made April 23d].

I, John Bateman, belonging to the Fifty-Second

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Regiment, commanded by Colonel Jones, . . . was in the party marching to Concord . . . ; being nigh the meeting-house in . . . Lexington, there was a small party of men gathered together in that place when
5 our Troops marched by, and I testify and declare, that I heard the word of command given to the Troops to fire, and some of said Troops did fire, and I saw one of said small party lay dead on the ground nigh said meeting-house, and I testify that I never
10 heard any of the inhabitants so much as fire one gun on said Troops.

(n) Col. 500. [Deposition of Lieutenant Gould, wounded and captured; taken April 25th.]

. . . On our arrival at [Lexington], we saw a body
15 of Provincial Troops armed, to the number of about sixty or seventy men; on our arrival they dispersed, and soon after firing began; but which party fired first, I cannot exactly say, as our Troops rushed on shouting and huzzaing previous to the firing, which
20 was continued by our Troops as long as any of the Provincials were to be seen. . . .

12. Col. 625 ff. [From a letter of the Rev. Wm. Gordon to a gentleman in England, dated May 17, 1775.]

25 . . . Soon after the affair [at Lexington, etc.], knowing what untruths are propagated by each party in matters of this nature, I concluded that I would ride to Concord, inquire for myself, and not rest upon the depositions that might be taken by

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others. Accordingly I went the last week. The Provincial Congress have taken depositions, which they have forwarded to Great Britain; but the Ministry and pretended friends to Government, will cry them down, as being evidence from party persons and rebels; the like may be objected against the present account, as it will materially contradict what has been published in Boston, though not expressly, yet as it is commonly supposed by authority; however, with the impartial world, and those who will not imagine me capable of sacrificing honesty to the old, at present heretical, principles of the Revolution,¹ it may have some weight. . . .

Upon information being received about half an hour after, that the Troops were not far off, the remains of the company who were at hand collected together, to the amount of about sixty or seventy, by the time the Regulars appeared, but were chiefly in a confused state, only a few of them being drawn up, which accounts for other witnesses making the number less, about thirty. There were present as spectators, about forty more, scarce any of whom had arms. The printed accounts tell us, indeed, that they observed about two hundred armed men. Possibly the intelligence they had before received had frightened those that gave the account to the General, so that they saw more than double. The said account, which has little truth in it, says "that

¹ *I. e.*, the Revolution of 1688-9.

Source Problems in United States History

Major Pitcairn galloping up to the head of the advanced companies, two officers informed him, that a man (advanced from those that were assembled) had presented his musket, and attempted to shoot
5 them, but the piece flashed in the pan."

The simple truth, I take to be this, which I received from one of the prisoners at Concord in free conversation, one James Marr, a native of Aberdeen, in Scotland, of the Fourth Regiment, who was
10 upon the advanced guard, consisting of six, besides a sergeant and corporal: They were met by three men on horseback before they got to the meeting-house a good way; an officer bid them stop; to which it was answered, you had better turn back, for you
15 shall not enter the Town; when the said three persons rode back again, and at some distance one of them offered to fire, but the piece flashed in the pan without going off. I asked Marr whether he could tell if the piece was designed at the soldiers, or to
20 give an alarm? He could not say which. The said Marr further declared, that when they and the others were advanced, Major Pitcairn said to the Lexington Company, (which, by the by, was the only one there,) stop, you rebels! and he supposed
25 that the design was to take away their arms; but upon seeing the Regulars they dispersed, and a firing commenced, but who fired first he could not say.
. . . Samuel Lee, a private in the Eighteenth Regiment, Royal Irish, acquainted me, that it was

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the talk among the soldiers that Major Pitcairn fired his pistol, then drew his sword, and ordered them to fire; which agrees with what Levi Harrington, a youth of fourteen last November, told me. . . .

Mr. Paul Revere, who was sent express, was taken and detained some time by the officers, being afterwards upon the spot, and finding the Regulars at hand, passed through the Lexington Company with another, having between them a box of papers belonging to Mr. Hancock, and went down a cross road, till there was a house so between him and the company as that he could not see the latter; he told me likewise, that he had not got half a gun-shot from them before the Regulars appeared; that they halted about three seconds; that upon hearing the report of a pistol or gun, he looked round, and saw the smoke in front of the Regulars, our people being out of view because of the house; then the Regulars huzzaed and fired, first two more guns, then the advanced guard, and so the whole body. The bullets flying thick about him, and he having nothing to defend himself with, ran into a wood, where he halted and heard the firing for about a quarter of an hour. . . .

I shall not trouble you with more particulars, but give you the substance as it lies in my own mind, collected from the persons whom I examined for my own satisfaction. The Lexington Company upon seeing the Troops, and being of themselves so un-

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equal a match for them, were deliberating for a few moments what they should do, when several dispersing of their own heads, the Captain soon ordered the rest to disperse for their own safety. Before the
5 order was given, three or four of the regular officers, seeing the company as they came up on the rising ground on this side the meeting [house], rode forward one or more, round the meeting-house, leaving it on the right hand, and so came upon them that way;
10 upon coming up one cried out, "you damned rebels, lay down your arms;" another, "stop, you rebels;" a third, "disperse, you rebels," &c. Major Pitcairn, I suppose, thinking himself justified by Parliamentary authority to consider them as rebels, perceiving
15 that they did not actually lay down their arms, observing that the generality were getting off, while a few continued in their military position, and apprehending there could be no great hurt in killing a few such Yankees, which might probably, according
20 to the notions that had been instilled into his head by the tory party, of the Americans being poltroons, and all the contest, gave the command to fire, then fired his own pistol, and so set the whole affair agoing. The printed account says very different; but what-
25 ever the General may have sent home in support of that account, the publick have nothing but bare assertions, and I have such valid evidence of the falsehood of several matters therein contained, that with me it has very little weight. The same ac-

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count tells us, that several shots were fired from a meeting house on the left, of which I heard not a single syllable, either from the prisoners or others, and the mention of which it would have been almost impossible to have avoided, had it been so, by one or another among the numbers with whom I freely and familiarly conversed. . . . To what I have wrote respecting Major Pitcairn, I am sensible his general character may be objected. But character must not be allowed to overthrow positive evidence when good, and the conclusions fairly deduced therefrom. . . . There were killed at Lexington eight persons. . . . [Gordon then describes the fight at Concord Bridge]. . . . The narrative tells us, that as Captain Parsons returned with his three companies over the bridge, they observed three soldiers on the ground, one of them scalped, his head much mangled, and his ears cut off, though not quite dead; all this is not fiction, though the most is. The Reverend Mr. Emerson informed me how the matter was, with great concern for its having happened. A young fellow coming over the bridge in order to join the country people, and seeing the soldier wounded and attempting to get up, not being under the feelings of humanity, very barbarously broke his skull, and let out his brains with a small axe, (apprehend of the tomahawk kind,) but as to his being scalped and having his ears cut off, there was nothing in it. . . . The people say that the soldiers are worse

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than the Indians. . . . The Regulars had more than one hundred killed, and one hundred and fifty wounded, besides about fifty taken prisoners. The country people had about forty killed, seven or eight taken prisoners, and a few wounded.

13. Col. 673 ff. A Narrative of the Excursion and Ravages of the King's Troops, under the command of General Gage, on the nineteenth of April, 1775; together with the Depositions taken by order of Congress to support the truth of it. Published by authority.

On the nineteenth day of April, one thousand seven hundred and seventy-five, a day to be remembered by all Americans of the present generation, and which ought, and doubtless will be handed down to ages yet unborn, the Troops of Britain, unprovoked, shed the blood of sundry of the loyal American subjects of the British King in the field of Lexington. . . . The inhabitants of Lexington, and the other Towns were about one hundred, some with and some without firearms, who had collected upon information that the detachment had secretly marched from Boston. . . . This small party of the inhabitants was so far from being disposed to commit hostilities against the Troops of their Sovereign, that, unless attacked, they were determined to be peaceable spectators of this extraordinary movement; immediately on the approach of Colonel Smith with the detachment under his command, they dispersed;

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but the detachment, seeming to thirst for blood, wantonly rushed on, and first began the hostile scene by firing on this small party, by which they killed eight men on the spot, and wounded several others before any guns were fired upon the Troops by our men. Not contented with this effusion of blood, as if malice had occupied their whole souls, they continued the fire, until all of this small party who escaped the dismal carnage were out of the reach of their fire.

. . . The devastation committed by the British Troops on their retreat, the whole of the way from Concord to Charlestown, is almost beyond description; such as plundering and burning of dwelling-houses and other buildings, driving into the street women in child-bed; killing old men in their houses unarmed. Such scenes of desolation would be a reproach to the perpetrators, even if committed by the most barbarous Nations; how much more when done by Britons famed for humanity and tenderness! and all this because these Colonies will not submit to the iron yoke of arbitrary power.

14. [The depositions quoted above are added, and in addition the following]:

(a) Col. 674.

CONCORD, *May 11, 1775.*

We, the subscribers, of lawful age, testify and say, that we buried the dead bodies of the King's Troops that were killed at the North Bridge in Concord,

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on the nineteenth day of April, 1775, where the action first began, and that neither of these persons was scalped, nor their ears cut off, as has been represented.

5

ZACHARIAH BROWN,
THOMAS DAVIS, JR.

(b) Col. 674. [Mrs. Hannah Adams deposes, May 17th]:

. . . Three of the soldiers broke into the room in
10 which I then was laid on my bed, being scarcely
able to walk from my bed to the fire, and not having
been to my chamber door from my being delivered
in child-birth to that time. One of said soldiers
immediately opened my curtains with his bayonet
15 fixed, and pointing the same to my breast. I im-
mediately cried out, "for the Lord's sake don't kill
me." He replied, "damn you." One that stood
near, said, "we will not hurt the woman if she will
get out of the house, but we will surely burn it." I
20 immediately arose, threw a blanket over me, went
out, and crawled into a corn-house near the door,
with my infant in my arms, where I remained until
they were gone. They immediately set the house
on fire, in which I had left five children and no other
25 person; but the fire was happily extinguished. . . .

(c) Col. 674. [Benjamin and Rachel Cooper, of Cambridge, depose, May 19th]:

Upon their return from blood and slaughter which they had made at Lexington and Concord, [the

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troops] fired more than one hundred bullets into the house where we dwell, through doors, windows, &c; then a number of them entered the house where we and two aged gentlemen were, all unarmed. We escaped for our lives into the cellar; the two aged gentlemen were immediately most barbarously and inhumanely murdered by them, being stabbed through in many places, their heads mauled, skulls broke, and their brains beat out on the floor and walls of the house. . . .

15. *History of the Battle of Lexington*, by Elias Phinney, Preface.

. . . The question, then [*i. e.*, in 1775], to be decided was, whether the Americans fired FIRST, not whether they fired AT ALL. . . . The inhabitants of Lexington feel it to be particularly incumbent on them to lay this statement of facts before the publick, at this time, on account of some recent publications stating that "AT CONCORD THE FIRST BLOOD WAS SHED BETWEEN THE BRITISH AND THE ARMED AMERICANS;" and also, that the "FIRST FORCIBLE RESISTANCE" was made at that place.

These statements, coming from very respectable sources, were viewed by the people of Lexington as not only calculated to give an erroneous impression to the world respecting *the place*, where the revolutionary war commenced; but, more particularly, to deprive the town of Lexington of the honour of hav-

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ing raised the first standard of an armed opposition to the unjust and tyrannical measures of the mother country. . . . [Therefore the town appointed a committee to take testimony, and prepare an
5 account. The depositions are in an appendix to this history.]

16. (a) pp. 31-33. [Deposition taken in 1825, in Appendix to Phinney's *History*. Elijah Sanderson, aged 73, describes being stopped
10 by British officers, and continues]:

I went to the tavern. The citizens were coming and going; some went down to find whether the British were coming; some came back, and said there was no truth in it. I went into the tavern, and,
15 after a while, went to sleep in my chair by the fire. In a short time after, the drum beat, and I ran out to the common, where the militia were parading. The captain ordered them to fall in. I then fell in. 'Twas all in the utmost haste. The British
20 troops were then coming on in full sight. I had no musket, having sent it home, the night previous, by my brother, before I started for Concord; and, reflecting I was of no use, I stepped out again from the company about two rods, and was gazing at the
25 British, coming on in full career. Several mounted British officers were forward; I think, five. The commander rode up, with his pistol in his hand, on a canter, the others following, to about eight or ten rods from the company, perhaps nearer, and ordered

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them to disperse. The words he used were harsh. I cannot remember them exactly. He then said, "Fire!" and he fired his own pistol, and the other officers soon fired, and with that the main body came up and fired, but did not take sight. They loaded again as soon as possible. All was smoke when the foot fired. I heard no particular orders after what the commander first said. I looked, and, seeing nobody fall, thought to be sure they couldn't be firing balls, and I didn't move off. After our militia had dispersed, I saw them firing at one man, (Solomon Brown), who was stationed behind a wall. I saw the wall smoke with the bullets hitting it. I then knew they were firing balls. After the affair was over, he told me he fired into a solid column of them, and then retreated.

(b) pp. 31-35. [Deposition of Wm. Munro, orderly sergeant, taken in 1825.]

. . . Capt. Parker dismissed his company, with orders to assemble again at the beat of the drum. Between day-light and sun-rise, Capt. Thaddeus Bowman rode up and informed, that the regulars were near. The drum was then ordered to be beat, and I was commanded by Capt. Parker to parade the company, which I accordingly did, in two ranks, a few rods northerly of the meeting-house.

When the British troops had arrived within about a hundred rods of the meeting-house, as I was afterwards told by a prisoner, which we took, "they heard

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our drum, and supposing it to be a challenge, they were ordered to load their muskets, and to move at double quick time." They came up almost upon a run. Col. Smith and Maj. Pitcairn rode up some
5 rods in advance of their troops, and within a few rods of our company, and exclaimed, "Lay down your arms, you rebels, and disperse!" and immediately fired his pistol. Pitcairn then advanced, and, after a moment's conversation with Col. Smith, he
10 advanced with his troops, and, finding we did not disperse, they being within four rods of us, he brought his sword down with great force, and said to his men, "Fire, damn you, fire!" The front platoon, consisting of eight or nine, then fired,
15 without killing or wounding any of our men. They immediately gave a second fire, when our company began to retreat, and, as I left the field, I saw a person firing at the British troops from Buckman's back door, which was near our left, where I was
20 parading the men when I retreated. . . . How many of our company fired before they retreated, I cannot say; but I am confident some of them did. . . .

(c) p. 35. [Deposition of John Munro, aged 77, taken in 1825. After the alarm.]

25 I immediately repaired to the place of parade, which was the common, adjoining the meeting-house, where sixty or seventy of the company had assembled in arms. Capt. Parker ordered the roll to be called, and every man to load his piece with

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powder and ball. After remaining on parade some time, and there being no further accounts of the approach of the regulars, we were dismissed, but ordered to remain within call of the drum. About day-light, Capt. Parker had information, that a regiment of British troops were near, and immediately ordered the drum beat to arms. I took my station on the right. While the company were collecting, Capt. Parker, then on the left, gave orders for every man to stand his ground until he should order them to leave. Many of the company had withdrawn to a considerable distance, and, by the time sixty or seventy of them had collected, the drum still beating to arms, the front ranks of the British troops appeared within twelve or fifteen rods of our line. They continued their march to within about eight rods of us, when an officer on horseback, Lt. Col. Smith, who rode in front of the troops, exclaimed, "Lay down your arms, and disperse, you rebels!" Finding our company kept their ground, Col. Smith ordered his troops to *fire*. This order not being obeyed, he then said to them, "G—d damn you, fire!" The front platoon then discharged their pieces, and, another order being given to fire, there was a general discharge from the front ranks. After the first fire of the regulars, I thought, and so stated to Ebenezer Munro, Jun. who stood next to me on the left, that they had fired nothing but powder; but, on the second firing, Munro said, they

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had fired something more than powder, for he had received a wound in his arm; and now, said he, to use his own words, "I'll give them the guts of my gun." We both then took aim at the main body
5 of the British troops,—the smoke preventing our seeing anything but the heads of some of their horses,—and discharged our pieces. . . . After I had fired the first time, I retreated about ten rods, and then loaded my gun a second time, with two balls, and, on firing
10 at the British, the strength of the charge took off about a foot of my gun barrel.

Such was the general confusion, and so much firing on the part of the British, that it was impossible for me to know the number of our men,
15 who fired immediately on receiving the second fire from the British; but that some of them fired, besides Ebenezer Munro and myself, I am very confident. . . .

(d) p. 36. [Deposition of Ebenezer Munro, aged
20 72, taken in 1825. After the second alarm.]

About seventy of our company had assembled when the British troops appeared. Some of our men went into the meeting-house, where the town's powder was kept, for the purpose of replenishing
25 their stock of ammunition. When the regulars had arrived within eighty or one hundred rods, they, hearing our drum beat, halted, charged their guns, and doubled their ranks, and marched up at quick step. Capt. Parker ordered his men to stand their

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ground, and not to molest the regulars, unless they meddled with us. The British troops came up directly in our front. The commanding officer advanced within a few rods of us, and exclaimed, "Disperse, you damned rebels! you dogs, run!—Rush on my boys!" and fired his pistol. The fire from their front ranks soon followed. After the first fire, I received a wound in my arm, and then, as I turned to run, I discharged my gun into the main body of the enemy. . . . As we retreated, one of our company, Benjamin Sampson, I believe, who was running with me, turned his piece and fired. When I fired, I perfectly well recollect of taking aim at the regulars. . . . I am confident, that it was the determination of most of our company, in case they were fired upon, to return the fire. I did not hear Capt. Parker's orders to his company to disperse.

(e) p. 37. [Deposition of Wm. Tidd, Lieutenant in Parker's company, taken in 1825. After saying that "it was expected the British would soon commence hostilities upon the then Provincials" and that the "company frequently met for exercise, the better to be prepared for defence," he describes the alarm]:

On the beat to arms, I immediately repaired to where our company were fast assembling; that when about sixty or seventy of them had taken post, the British had arrived within sight, and were advancing on a quick march towards us, when I distinctly

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heard one of their officers say, "Lay down your arms and disperse, ye rebels!" They then fired upon us. . . .

(f) p. 38. [Nathan Munro, deposition taken in
5 1825.]

. . . When arrived at the common, the bell was ringing, and the company collecting. I immediately got my arms and went to the parade. Capt. Parker gave orders to us to load our guns, but not to fire,
10 unless we were fired upon first. About five o'clock in the morning, the British made their appearance at the east end of the meeting-house, near where our men were, and immediately commenced firing on us. I got over the wall into Buckman's land,
15 about six rods from the British, and then turned and fired at them. . . .

(g) p. 39. [Deposition of Joseph Underwood, aged 75, taken in 1825.]

. . . When the regulars had arrived within about
20 one hundred rods of our line, they charged their pieces, and then moved toward us at a quick step. Some of our men, on seeing them, proposed to quit the field, but Capt. Parker gave orders for every man to stand his ground, and said he would order
25 the first man shot, that offered to leave his post. I stood very near Capt. Parker, when the regulars came up, and am confident he did not order his men to disperse, till the British troops had fired upon us the second time.

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17. *Life and Correspondence of Theodore Parker*, by John Weiss, I, 12.

[From a letter dated September 10, 1858, from Theodore Parker to George Bancroft.]

At the battle of Lexington, when Capt. P[arker] drew up his men as the British were nearing, he ordered "every man to load" his piece with powder and ball. "Don't fire unless fired upon; but if they mean to have a war, *let it begin here!*" I think these significant words ought to be preserved.¹ They were kept as the family tradition of the day, and when the battle was re-enacted in 1820 (or there about), his orderly sergeant took the Captain's place, and repeated the words, adding, "For them is the *very words* Captain Parker said." Besides, some of the soldiers, when they saw the flash of the British guns, turned to run: he drew his sword, and said, "I will order the first man *shot* that offers to run!" Nobody ran till he told them, "Disperse and take care of yourselves."

18. *Historical Magazine*, Series I, 4:202.

[From a letter dated February 16, 1858, by Theodore Parker.]

. . . He [Parker] ordered the drum beat in front of the tavern, close by the Common. Seventy men appeared, were formed into four platoons, and marched on to the Common. His nephew, Jona-

¹ These words appear on the monument erected at Lexington in 1884 to commemorate the battle.

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than Harrington, the last survivor of the battle, then a lad of sixteen, played the fife, which, with a drum, was the only music. He formed them in a single line, then wheeled the first and fourth platoons
5 at right angles, stepped in front and ordered every man to load his piece with powder and ball. When this was done, he said: "Don't fire unless fired upon. But if they mean to have a war, let it begin here." He then wheeled back the two wings into a con-
10 tinuous line, and stood a little in front of the end of the right wing. Soon the British came close upon them, and some were soon terrified, and began to skulk off. He drew his sword, and called them by name to come back, and said he would order the
15 first man shot who should run away. . . .

PROBLEM II

II.—The Preliminaries of the Revolution

The Preliminaries of the Revolution

I. THE HISTORICAL SETTING OF THE PROBLEM

IT is not necessary to relate here the historical facts leading up to the American Revolution. It is necessary to give the principle on which the following documents and extracts of documents have been chosen. They have been chosen to illustrate the different kinds of arguments about the power of Parliament, and especially its right to tax the colonists. The basis of the selection is not to enable the student to decide which side, the English or the American, was right—*i. e.*, legally justified; the historical fact is that there were differences of opinion; another historical fact is that even those denying the power of Parliament did not all use the same line of argument. The nature of these arguments is important because we can find in them thoughts and principles which were to be embodied in institutions of government or which were to control the operations of government. The important fact to be seen is that in the stress of controversy the Americans were announcing principles of great moment for our later constitutional history. What is meant by this statement will be made clearer in succeeding paragraphs.

We may select as fundamental in our whole governmental system in America two facts or two principles: first, we have written constitutions. The chief thing,

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however, is not that they are written, but that they are binding on the government; the government is set up by the people who have given authority and have limited authority by fundamental law; we have "rigid constitutions"—*i. e.*, constitutions not to be varied by any ordinary act of legislation. The fundamental constitutional principle is that government has not inherent and original, but only delegated and derived authority. This principle underlies our federal and our state constitutions, and is clearly set forth as far as the states are concerned in the bills of rights of the state constitutions.

The second fact, which might also be called a principle, is that the United States as a whole is not a simple state, but a federal state; that is to say, we have a republic of republics; we have a national government and also states with their governments; authority is thus distributed among governments; each government has authority within its sphere. Before there could be any conception of such a state, men had to see that "powers" of government could be distinguished one from another; *e. g.*, the taxing power from the power to regulate commerce. Our present system of political order—the federal state—is complicated; the machinery appears intricate because we have two governments immediately over each individual. We need not wonder, therefore, that there was difficulty, in the days of Revolutionary argument, in grasping the principle on which such a complicated system could rest. A generation of political discussions (1754-1787) was needed before the principle of federation was grasped: as early as 1754, by the Albany plan of union, an effort was made to arrange a scheme for the organization of the empire; and in one way or another the problem remained unsolved until, after the colonies had separated from Britain, the necessity of "a more

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perfect union" became imperative here in America and the Constitution of the United States was established.

Now if we examine even the few documents presented here, we shall find men putting forth or struggling with the two ideas or principles mentioned above. (I) On one side, the American, it was declared that Parliament did not have all power over the individual man, that government was limited and restrained and had only delegated authority; government rested on the consent of the governed—*i. e.*, was originally made by people. On the other side the omnipotence of Parliament was asserted. (II) Again the colonists claimed to have their own institutions, and, while the Americans, almost to the end, generally admitted that Parliament had authority, they denied that Parliament was possessed of *all* authority in the empire; in other words, they declared, though they did not quite thoroughly see the whole system which they advocated, that the empire was not a centralized empire, but was possessed of many governments each having authority in its own sphere. They were, therefore, struggling with the idea of federalism, the existence of a state characterized by distribution of authority among governments. The English empire had been in practice a federated empire. There were various governments; the central legislative authority had commonly legislated on imperial concerns—on the post-office, intercolonial and foreign commerce, foreign affairs, etc., while the colonial assemblies had managed local affairs, particularly taxation. The question (1764-1776) was really, therefore, whether this practice constituted a *fundamental legal basis* of the empire. Were the colonies and Parliament legally entitled to authority within their respective spheres and nothing more?

That the colonists contended strongly against unlimited power, and especially unlimited power over indi-

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viduals, will appear clearly enough from even the documents here given. It is not so clear that they were at any time so consciously arguing for the rights of the colonies as colonies in the make-up of the empire; as to that there was some confusion, perhaps; certainly one might say that the Massachusetts House, in 1773, did not see the empire as a composite or federated empire at all. Notice, however, especially, Dickinson's claim and the assertions of the Council in "the great controversy" with Hutchinson.

While the sources presented in this volume are not selected to enable the student to see which side was legally right, it has seemed well to insert portions of "the great controversy" of 1773. That controversy very fully and ably exposed the legal arguments on both sides, and, even from such excerpts as we are able to print here, we can see the nature of these arguments. Such excerpts also show the problem of imperial order and some of the ideas of the colonists, which are in themselves significant as helping to make institutions.

II. INTRODUCTIONS TO THE SOURCES

1. *The Rights of the British Colonies Asserted and Proved*, by James Otis, Esq. (Boston, 1764.)

The volume was written after the issuing of the Revenue Act of 1764 and before the Stamp Act. Otis was for some years an influential figure in Massachusetts politics, and the principles that he enunciated were doubtless widely discussed.

2. *Patrick Henry. Life, Correspondence and Speeches*, by William Wirt Henry, Vol. I. (New York, 1891.)

3. *Patrick Henry*, by Moses Coit Tyler. (Boston, 1898.)

The Virginia resolutions were presented to the House

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of Burgesses by Patrick Henry on May 29, 1765. The first five of the resolutions as here given, and probably only the first five, were passed by the House the next day. There has been some difficulty in deciding just what the original series of resolutions contained. The fact presumably is that, of the seven resolutions here printed, all were written and presented by Henry; that resolutions 6 and 7 and the preamble were not adopted by the House, and that 5 was later expunged; that, however, the original resolutions, as presented by Henry, with the exception of 3, which for some reason was dropped out, were published in the newspapers.

4. *Principles and Acts of the Revolution in America, etc.*, H. Niles, editor. (Baltimore, 1822.)

This contains the Journal of the Stamp Act Congress, said to have been copied from the official copy found among the papers of Cæsar Rodney, one of the delegates from Delaware. The resolutions in full are thirteen in number, with an opening statement and a final unnumbered resolution requesting appeal. See also William MacDonald, *Select Charters and other Documents Illustrative of American History, 1606-1775*. (New York, 1899.)

5. *The Parliamentary History of England from the Earliest Period to the Year 1803, from which last mentioned Epoch it is Continued downwards in the Work entitled "The Parliamentary Debates."* Vol. XVI, 1765-1771. (London, 1813.)

Debates in Parliament were not officially reported and published at this time. The debate in the Commons on the address of thanks to the King, from which we have chosen portions of speeches by Nugent, Pitt, and Grenville, was taken down, doubtless in much condensed form, and was published in a pamphlet which, to evade the resentment of the House, appeared to be published at Paris. The debate in the House of Lords, from which

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we have chosen portions of speeches by Lord Lyttelton, Lord Camden, and Lord Mansfield, is printed in *Parliamentary History* from a manuscript in the Hardwicke Collection. The "Speech of Lord Camden on the American Declaratory Bill" is reprinted in the *History* from the *Political Register*.

6. *Speeches of the Governors of Massachusetts from 1765 to 1775; and the answers of the House of Representatives, to the same; with their Resolutions and Addresses for that period, and other public papers, relating to the dispute between this country and Great Britain, which led to the Independence of the United States.* (Boston, 1818.)

The cover title, as well as the running page-heading, is *Massachusetts State Papers*.

7. *The Writings of Samuel Adams.* Collected and edited by Harry Alonzo Cushing. Vol. I. (New York, 1904.)

The excerpts taken from the *Massachusetts State Papers* and from the *Writings* of Adams are portions of letters adopted by the Massachusetts House and sent out to several persons. The most important is the circular letter, so called, which was addressed to the speakers of other houses of representatives "on this continent." All contain much the same sentiments. They are attributed to the pen of Samuel Adams, but on the committee that prepared them were Otis, Cushing, Hancock, and others. It is not unlikely that Otis furnished directly or by his previous writing the basic principles. The sentiments were put forth in opposition to the Townshend Acts.

8. *Gentleman's Magazine, and Historical Chronicle*, Vol. XXXVIII. (London, 1768.)

The magazine was edited by "Sylvanus Urban, Gent." The name, of course, was a pseudonym. The magazine contains all kinds of interesting material—poetry, communications, notices and reviews of books, and essays or discussions on current topics.

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9. *The Writings of John Dickinson*, Vol. I. Political Writings 1764-1774. Edited by Paul Leicester Ford. (Philadelphia, 1895.)

This volume is No. XIV of the *Memoirs of the Historical Society of Pennsylvania*. The excerpts are taken from "Letters from a farmer in Pennsylvania," which were originally printed in the *Pennsylvania Chronicle and Universal Advertiser*; the first appeared on December 2, 1767, the last on February 12, 1768. Various editions were published. The letters received wide attention.

III. QUESTIONS AND SUGGESTIONS FOR STUDY

1. Did James Otis assert the courts could declare acts void? On what ground? Did he have the acts of Parliament in mind?
2. Did he contend that Parliament's power was limited? In the examination of other documents notice how this contention underlies the American arguments against Parliament's right to tax the colonies. Notice also the documents in the next main division of this book. (No. III.)
3. What is the doctrine of the Massachusetts Memorial? Does it appear that, in these early days, the power of courts to declare laws void and the limits of legislative authority were a portion of the revolutionary argument?
4. In Patrick Henry's first resolution does he base freedom from Parliamentary taxation on general rights of Englishmen or on the structure of the Empire? What is the basis of his assertion in the 4th and 5th resolutions? In these later resolutions does he rely on the practices and the practical make-up of the Empire and the fact that the colonial governments have exercised a power of taxation?
5. If Patrick Henry's resolutions stated the true law of the

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Empire, was it a simple Empire, or a composite Empire in which powers were legally distributed?

6. In the resolutions of the Stamp Act Congress is reliance placed on the rights of Englishmen, or on the fact that the colonies have their own institutions, or on both? If there are two distinct assertions, are they contradictory? Do they ask for representation in Parliament?
7. Does Mr. Nugent's statement show that even as early as 1766 something more was demanded than money? In other words, what is the significance of the "peppercorn" statement?
8. Outline Pitt's speech. Did the colonies "participate" in the constitution?
9. What do you think Pitt meant by the constitution?
10. What distinctions does he make in discussing the legislative power of Parliament?
11. According to Pitt, have the "Commons" the right to tax? What does he mean by constitutional right?
12. Does Grenville deny the distinction between internal and external taxes? Notice Grenville's assertion of "supreme" power, and mark how much of the later controversy gathered about assertions of supreme power, on the one hand, and limited power, on the other. In the selection from Pitt's reply to Grenville, does he take up in part the same position as that taken by Dickinson later?
13. Does Franklin commit himself to the distinction between internal and external taxation? What does Franklin say concerning the arguments in Parliament to the effect that there was no difference between internal and external taxation? To what might such arguments lead? Is it apparent that the real problem is that of recognizing that, in the conduct of the Empire, Parliament had certain powers and not others?
14. What was the extent of Lord Lyttelton's claim of power for Parliament? Does that statement allow any possibility of distribution of power in the Empire?
15. Does he deny that the colonies make the distinction be-

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tween internal and external taxes? If Lyttelton's statements were sound, were the colonies totally without rights under Parliament—i. e., rights which Parliament could not take away?

16. What was Lord Mansfield's assertion?
17. What is Lord Camden's assertion? Does he base his assertion on general principles of justice and of man's rights under government? What English philosopher does he quote? Would Camden's argument be just as good if there had been no legislatures in America with their power of taxation? Would Henry's argument be just as good?
18. Give the argument against virtual representation as applied to America. Might the principle of virtual representation be just in England and unjust when applied to America?
19. The source of the assertion that the constitution is fixed may be seen by looking at the first document under the next division (No. III). In what other sources given in this book do you find this assertion?
20. Does the Massachusetts House base its rights on the British constitution? Does the House seem to believe that England had a fixed constitution? Distinguish between the constitution of the Empire and the British constitution.
21. How do these excerpts illustrate the truth that the Americans were claiming, as already existing, what in reality they were to produce, viz., a "fixed" constitution beyond alteration by the legislature?
22. Does Dickinson accept the distinction between internal and external taxation? What particular powers and what general powers does he explicitly acknowledge to be in the possession of Parliament? How does he define a tax? If Parliament could tax and also pass and enforce trade regulations, what of American liberty?
23. If Dickinson was right, is it apparent, again, that the problem in those days of argument was to distinguish

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between "powers" and to have them distributed among governments in the Empire? Do we distinguish now between the taxing power and the power to regulate commerce?

24. If such an arrangement as Dickinson defends could have been recognized as the law of the Empire, would the Empire have been simply a "unitary" or a composite—*i. e.*, federated—Empire?
25. Does Hutchinson state that the authority of Parliament had been recognized by the colonists? What was the position of the colonies? Were they like ordinary corporations, subject to law? Was the authority of Parliament now (1773) denied?
26. How does Hutchinson state the arguments of the colonists? How does he seek to refute them by reference to the Charter?
27. Do English subjects, according to Hutchinson, relinquish certain rights by removal from England?
28. What general principle does Hutchinson believe must be accepted as conclusive? If there cannot be two independent legislatures, is it possible that there should be such a state as we now call a "federal state"? Did Hutchinson thus deny the possibility of "federalism"? Is there more than one independent legislature in the United States now? Does this statement of Hutchinson's and the answer show that the controversy was over the theory of the structure of the Empire?
29. How does the Council discuss "supreme authority"? How does the Council deny that Englishmen relinquish the right of being governed by their own representatives when they remove from the Kingdom?
30. In the first portion of the answer of the House, notice that that body prepares to deny that Parliament has any power. Compare this with the Council's denial of "supreme authority."
31. What does the House think is meant by the provision of the Charter that a law should not be repugnant to the laws of England?

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2. Does the House deny that the Charter reserved Parliamentary power?
3. How does the House meet Hutchinson's statement that no line can be drawn between the supreme authority of Parliament and total independence? Is it thus apparent that the issue is being reduced to (a) complete submission to Parliament, (b) complete independence of Parliament?
4. According to the view of the House, did the Empire center in the Parliament or in the King? Have we found before that the Council could believe in the limited but not complete authority of Parliament?
5. Does the Governor deny the right of the King to alienate territory from the Crown and establish independent legislatures?
6. How does he argue, from the acts of the colonial government at the time of the Revolution of 1688, that the colony was subject to Parliament?
7. In the second answer of the Council we find a denial, as before, of supreme unlimited authority. Does the House answer in the same way or deny all authority? Notice carefully the second answer of the Council. Is it apparent that the Council grasped the principle of federalism—the permanent legal distribution of powers in the Empire?
8. How does the House meet the Governor's denial of the right of the King to alienate territory and establish independent legislatures? If the relation is feudal only, has Parliament authority?
9. How does the House meet the assertion that, by proclaiming William and Mary, the colonies became subject to Parliament?
10. Compare the position of the House in the Hutchinson controversy with the assertion made in the first of the Stamp Act Congress resolutions. Compare with the position of John Dickinson.
11. Do you know what was the position taken by the Congress of 1774? Did the Declaration of Independence deny

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that Parliament had had any authority whatever over the colonies?

42. Do you find any evidence in these sources, or in those given in Division III following, that there are, in the minds of the colonists, certain fundamental rights, existing before government, which are beyond the rightful reach of government and beyond its legal reach? Do you find evidence that they believed and insisted on the belief that governments obtained power from the people rather than granted rights to them?

IV. The Sources¹

1. *The Rights of the British Colonies asserted and proved*, by James Otis. (1764.)

Page 61.

The equity and justice of a bill may be questioned, with perfect submission to the legislature. Reasons may be given, why an act ought to be repealed, and yet obedience must be yielded to it till that repeal takes place. If the reasons that can be given against an act, are such as plainly demonstrate that it is against natural equity, the executive courts² will adjudge such acts void. It may be questioned by some, though I make no doubt of it, whether they are not obliged by their oaths to adjudge such acts void. If there is not a right of private judgment to be exercised, so far at least as to petition for a repeal, or to determine the expediency of risking a trial at law, the parliament might make itself arbitrary, which it is conceived it cannot by the constitution.—I think every man has a right to examine as freely into the origin, spring and founda-

¹ In Sources 5, 6, and 7 italics are omitted.

² The words "executive courts" distinguish the judicial tribunals from the "general court," which was the legislature of Massachusetts.

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tion of every power and measure in a commonwealth, as into a piece of curious machinery, or a remarkable phenomenon in nature; and that it ought to give no more offence to say, the parliament
5 have erred, or are mistaken, in a matter of fact, or of right, than to say it of a private man, if it is true of both. If the assertion can be proved with regard to either, it is a kindness done them to shew them the truth. With regard to the public,
10 it is the duty of every good citizen to point out what he thinks erroneous in the commonwealth.

Pages 70, 71.

To say the parliament is absolute and arbitrary, is a contradiction. The parliament cannot make 2
15 and 2, 5: Omnipotency cannot do it. The supreme power in a state, is *jus dicere* only:—*jus dare*, strictly speaking, belongs alone to God. Parliaments are in all cases to declare what is for the good of the whole; but it is not the declaration of parliament
20 that makes it so: There must be in every instance, a higher authority, *viz.*, GOD. Should an act of parliament be against any of his natural laws, which are immutably true, their declaration would be
25 consequently void: and so it would be adjudged by the parliament itself, when convinced of their mistake. Upon this great principle, parliaments repeal such acts, as soon as they find they have been mistaken, in having declared them to be for the

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public good, when in fact they were not so. When such mistake is evident and palpable, as in the instances in the appendix, the judges of the executive courts have declared the act "of a whole parliament void." See here the grandeur of the British constitution! See the wisdom of our ancestors! The supreme legislative, and the supreme executive, are a perpetual check and balance to each other. If the supreme executive errs, it is informed by the supreme legislative in parliament: if the supreme legislative errs, it is informed by the supreme executive in the King's courts of law.

Pages 109-111.

[Portions of a memorial voted by the Massachusetts House to be sent to the colony's agent in England. It is bound in with Otis's pamphlet and paged with it and, for various reasons, may be considered largely his work.]

The question is not upon the general power or right of the parliament, but whether it is not circumscribed within some equitable and reasonable bounds? It is hoped it will not be considered as a new doctrine, that even the authority of the parliament of Great-Britain is circumscribed by certain bounds, which if exceeded, their acts become those of meer power without right, and consequently void. The judges of England have declared in favour of these sentiments, when they expressly declare, that acts of parliament against natural equity are void. That acts against the fundamental principles of the

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British constitution are void. This doctrine is agreeable to the law of nature and nations, and to the divine dictates of natural and revealed religion. It is contrary to reason that the supreme power should
5 have right to alter the constitution. This would imply, that those who are entrusted with Sovereignty by the people, have a right to do as they please. In other words, that those who are invested with power to protect the people, and sup-
10 port their rights and liberties, have a right to make slaves of them. This is not very remote from a flat contradiction. Should the parliament of Great-Britain follow the example of some other foreign states, and vote the King absolute and despotic;
15 would such an act of parliament make him so? Would any minister in his senses advise a Prince to accept of such an offer of power? It would be unsafe to accept of such a donation, because the parliament or donors would grant more than was
20 ever in their power lawfully to give. The law of nature never invested them with a power of surrendering their own liberty; and the people certainly never intrusted any body of men with a power to surrender theirs in exchange for slavery.¹

25 ¹ *The Rights of the Colonies* also contains an excerpt from Vattel's *Law of Nations* (see Problem III, pp. 137-139). The excerpt is printed as a foot-note to the memorial and contains the statement that "the constitution of the state ought to be fixed." The wording from the translated edition appearing in the present volume is "The constitu-
30 tion of the state ought to possess stability."

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2. *Patrick Henry*, by M. C. Tyler. [Resolutions in the Virginia House of Burgesses, 1765.]

Pages 69-71 [61-63 in earlier edition].

Whereas, the honorable House of Commons in England have of late drawn into question how far the General Assembly of this colony hath power to enact laws for laying of taxes and imposing duties, payable by the people of this, his majesty's most ancient colony: for settling and ascertaining the same to all future times, the House of Burgesses of this present General Assembly have come to the following resolves:—

1. *Resolved*, That the first adventurers and settlers of this, his majesty's colony and dominion, brought with them and transmitted to their posterity, and all other his majesty's subjects, since inhabiting in this, his majesty's said colony, all the privileges, franchises, and immunities that have at any time been held, enjoyed and possessed, by the people of Great Britain.

2. *Resolved*, That by two royal charters, granted by king James the First, the colonists aforesaid are declared entitled to all the privileges, liberties, and immunities of denizens and natural born subjects, to all intents and purposes, as if they had been abiding and born within the realm of England.

3. *Resolved*, That the taxation of the people by themselves or by persons chosen by themselves to represent them, who can only know what taxes the

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people are able to bear, and the easiest mode of raising them, and are equally affected by such taxes themselves, is the distinguishing characteristic of British freedom, and without which the ancient constitution cannot subsist.

4. *Resolved*, That his majesty's liege people of this most ancient colony have uninterruptedly enjoyed the right of being thus governed by their own Assembly in the article of their taxes and internal
10 police, and that the same hath never been forfeited, or any other way given up, but hath been constantly recognized by the kings and people of Great Britain.

5. *Resolved*, therefore, That the General Assembly of this colony have the only and sole exclusive right
15 and power to lay taxes and impositions upon the inhabitants of this colony; and that every attempt to vest such power in any person or persons whatsoever, other than the General Assembly aforesaid, has a manifest tendency to destroy British as well
20 as American freedom.

6. *Resolved*, That his majesty's liege people, the inhabitants of this colony, are not bound to yield obedience to any law or ordinance whatever, designed to impose any taxation whatsoever upon them,
25 other than the laws or ordinances of the General Assembly aforesaid.

7. *Resolved*, That any person who shall, by speaking or writing, assert or maintain that any person or persons, other than the General Assembly of this

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colony, have any right or power to impose or lay any taxation on the people here, shall be deemed an enemy to his majesty's colony.

3. *Principles and Acts of the Revolution in America.*

H. Niles, editor, p. 457. [Resolutions adopted by the Stamp Act Congress, October 19, 1765.]

1st. That his majesty's subjects in these colonies, owe the same allegiance to the crown of Great-Britain, that is owing from his subjects born within the realm, and all due subordination to that august body, the parliament of Great-Britain

2d. That his majesty's liege subjects in these colonies are entitled to all the inherent rights and privileges of his natural born subjects within the kingdom of Great Britain.

3d. That it is inseparably essential to the freedom of a people, and the undoubted right of Englishmen, that no taxes should be imposed on them, but with their own consent, given personally, or by their representatives.

4th. That the people of these colonies are not, and, from their local circumstances, cannot be, represented in the house of commons in Great-Britain.

5th. That the only representatives of the people of these colonies, are persons chosen therein, by themselves; and that no taxes ever have been, or can be constitutionally imposed on them, but by their respective legislatures.

6th. That all supplies to the crown, being free

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gifts of the people, it is unreasonable and inconsistent with the principles and spirit of the British constitution, for the people of Great Britain to grant to his majesty the property of the colonists.

5 7th. That trial by jury is the inherent and invaluable right of every British subject in these colonies.

8th. That the late act of parliament, entitled, An act for granting and applying certain stamp
10 duties, and other duties in the British colonies and plantations in America, &c. by imposing taxes on the inhabitants of these, colonies, and the said act, and several other acts, by extending the jurisdiction of the courts of admiralty beyond its ancient limits,
15 have a manifest tendency to subvert the rights and liberties of the colonists.

4. *Parliamentary History*, Vol. XVI. [Debate in the House of Commons on the Address of thanks to the King, January, 1766.]

20 Cols. 96, 97.

Mr. Nugent, (afterwards Lord Clare), insisted, That the honour and dignity of the kingdom obliged us to compel the execution of the Stamp Act, except the right was acknowledged, and the repeal
25 solicited as a favour. He computed the expence of the troops now employed in America for their defence, as he called it, to amount to nine pence in the pound of our land tax; while the produce of the

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Stamp-act would not raise a shilling a head on the inhabitants of America; but that a pepper-corn, in acknowledgment of the right, was of more value, than millions without. He expatiated on the extreme ingratitude of the colonies; and concluded with charging the ministry with encouraging petitions to parliament, and instructions to members from trading and manufacturing towns, against the act.

[Speech of William Pitt.]

Col. 98.

... It is a long time, Mr. Speaker, since I have attended in parliament. When the resolution was taken in the House to tax America, I was ill in bed. If I could have endured to have been carried in my bed, so great was the agitation of my mind for the consequences! I would have solicited some kind hand to have laid me down on this floor, to have borne my testimony against it. It is now an act that has passed; I would speak with decency of every act of this House, but, I must beg the indulgence of the House to speak of it with freedom.

.
Cols. 99, 100.

It is my opinion, that this kingdom has no right to lay a tax upon the colonies. At the same time, I assert the authority of this kingdom over the colonies, to be sovereign and supreme, in every circumstance of government and legislation whatsoever. They are the subjects of this kingdom, equally en-

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titled with yourselves to all the natural rights of mankind and the peculiar privileges of Englishmen. Equally bound by its laws, and equally participating of the constitution of this free country. The
5 Americans are the sons, not the bastards, of England. Taxation is no part of the governing or legislative power. The taxes are a voluntary gift and grant of the Commons alone. In legislation the three estates of the realm are alike concerned,
10 but the concurrence of the peers and the crown to a tax, is only necessary to close with the form of a law. The gift and grant is of the Commons alone. In ancient days, the crown, the barons and the clergy possessed the lands. In those days, the barons and
15 the clergy gave and granted to the crown. They gave and granted what was their own. At present, since the discovery of America, and other circumstances permitting, the Commons are become the proprietors of the land. The crown has divested itself of its
20 great estates. The church (God bless it) has but a pittance. The property of the Lords, compared with that of the Commons, is as a drop of water in the ocean: and this House represents those Commons, the proprietors of the lands; and those
25 proprietors virtually represent the rest of the inhabitants. When, therefore, in this House we give and grant, we give and grant what is our own. But in an American tax, what do we do? We, your Majesty's Commons of Great Britain give and grant

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to your Majesty, what? Our own property? No. We give and grant to your Majesty, the property of your Majesty's commons of America. It is an absurdity in terms.

The distinction between legislation and taxation is essentially necessary to liberty. The Crown, the Peers, are equally legislative powers with the Commons. If taxation be a part of simple legislation, the Crown, the Peers, have rights in taxation as well as yourselves: rights which they will claim, which they will exercise, whenever the principle can be supported by power.

There is an idea in some, that the colonies are virtually represented in this House. I would fain know by whom an American is represented here? Is he represented by any knight of the shire, in any county in this kingdom? Would to God that respectable representation was augmented to a greater number! Or will you tell him, that he is represented by any representative of a borough—a borough, which perhaps, its own representative never saw. This is what is called, 'the rotten part of the constitution.' It cannot continue the century; if it does not drop, it must be amputated. The idea of a virtual representation of America in this House, is the most contemptible idea that ever entered into the head of a man; it does not deserve a serious refutation.

The Commons of America, represented in their

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several assemblies, have ever been in possession of the exercise of this, their constitutional right, of giving and granting their own money. They would have been slaves if they had not enjoyed it. At the
5 same time, this kingdom, as the supreme governing and legislative power, has always bound the colonies by her laws, by her regulations, and restrictions in trade, in navigation, in manufactures, in every thing, except that of taking their money out of their
10 pockets without their consent.

[Speech of George Grenville.]

Cols. 101, 102.

I cannot understand the difference between external and internal taxes. They are the same in
15 effect, and only differ in name. That this kingdom has the sovereign, the supreme legislative power over America, is granted. It cannot be denied; and taxation is a part of that sovereign power. It is one branch of the legislation. It is, it has been
20 exercised, over those who are not, who were never represented. It is exercised over the India Company, the merchants of London, the proprietors of the stocks, and over many great manufacturing towns. It was exercised over the palatinate of
25 Chester, and the bishopric of Durham, before they sent any representatives to parliament. . . . Protection and obedience are reciprocal. Great Britain protects America; America is bound to yield obedience.

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[Speech of William Pitt.]

Col. 105.

. . . If the gentleman does not understand the difference between internal and external taxes, I cannot help it; but there is a plain distinction between taxes levied for the purposes of raising a revenue, and duties imposed for the regulation of trade, for the accommodation of the subject; although, in the consequences, some revenue might incidentally arise from the latter.

[Examination of Benjamin Franklin in the House of Commons, January 28, 1766.]

Col. 137.

Q. What is your name, and place of abode?—
A. Franklin, of Philadelphia.

Do the Americans pay any considerable taxes among themselves?—Certainly many, and very heavy taxes.

Col. 141.

Did you ever hear the authority of parliament to make laws for America questioned till lately?—The authority of parliament was allowed to be valid in all laws, except such as should lay internal taxes. It was never disputed in laying duties to regulate commerce.

Col. 142.

What will be the opinion of the Americans on those resolutions?—They will think them unconstitutional and unjust.

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Was it an opinion in America before 1763, that the parliament had no right to lay taxes and duties there?—I never heard any objection to the right of laying duties to regulate commerce; but a right
3 to lay internal taxes was never supposed to be in parliament, as we are not represented there.

On what do you found your opinion, that the people in America made any such distinction?—I know that whenever the subject has occurred in
10 conversation where I have been present, it has appeared to be the opinion of every one, that we could not be taxed in a parliament where we were not represented. But the payment of duties laid by act of parliament, as regulations of commerce, was
15 never disputed.

But can you name any act of assembly, or public act of any of your governments, that made such distinction?—I do not know that there was any; I think there was never an occasion to make any
20 such act, till now that you have attempted to tax us; that has occasioned resolutions of assembly, declaring the distinction, in which I think every assembly on the continent, and every member in every assembly, have been unanimous.

25 Col. 144.

You say that the colonies have always submitted to external taxes, and object to the right of parliament only in laying internal taxes; now can you shew that there is any kind of difference between

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the two taxes to the colony on which they may be laid?—I think the difference is very great. An external tax is a duty laid on commodities imported; that duty is added to the first cost, and other charges on the commodity, and when it is offered to sale, makes a part of the price. If the people do not like it at that price, they refuse it; they are not obliged to pay it. But an internal tax is forced from the people without their consent, if not laid by their own representatives. The Stamp Act says, we shall have no commerce, make no exchange of property with each other, neither purchase nor grant, nor recover debts; we shall neither marry nor make our wills, unless we pay such sums, and thus it is intended to extort our money from us, or ruin us by the consequences of refusing to pay it.

But supposing the internal [external] tax or duty to be laid on the necessities of life imported into your colony, will not that be the same thing in its effects as an internal tax?—I do not know a single article imported into the northern colonies, but what they can either do without or make themselves.

Col. 147.

Did the Americans ever dispute the controuling power of parliament to regulate commerce?—No.

Can any thing less than a military force carry

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the Stamp Act into execution?—I do not see how a military force can be applied to that purpose.

Cols. 148, 149.

You say they do not object to the right of parliament, in laying duties on goods to be paid on their importation; now, is there any kind of difference between a duty on the importation of goods and an excise on their consumption?—Yes; a very material one; an excise, for the reasons I have just mentioned, they think you can have no right to lay within their country. But the sea is yours; you maintain, by your fleets, the safety of navigation in it, and keep it clear of pirates; you may have therefore a natural and equitable right to some toll or duty on merchandizes carried through that part of your dominions, towards defraying the expence you are at in ships to maintain the safety of that carriage.

Cols. 158, 159.

Does the distinction between internal and external taxes exist in the words of the charter?—No, I believe not.

Then may they not, by the same interpretation, object to the parliament's right of external taxation?—They never have hitherto. Many arguments have been lately used here to shew them that there is no difference, and that if you have no right to

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tax them internally, you have none to tax them externally; or make any other law to bind them. At present they do not reason so, but in time they may possibly be convinced by these arguments.

5 Do not the resolutions of the Pennsylvania assemblies say, all taxes?—If they do, they mean only internal taxes; the same words have not always the same meaning here and in the colonies. By taxes they mean internal taxes; by duties they mean
10 customs; these are the ideas of the language.

Have you not seen the resolutions of the Massachusetts Bay assembly?—I have.

Do they not say, that neither external nor internal taxes can be laid on them by parliament?—I don't
15 know that they do; I believe not.

Debate in the House of Lords, February, 1766.

[Speech of Lord Lyttelton.]

Col. 167.

. . . The last great maxim of this and every other
20 free government is, that 'No subject is bound by any law to which he is not actually or virtually consenting.'

If the colonies are subjects of Great Britain, they are represented and consent to all statutes.

25 But it is said they will not submit to the Stamp Act as it lays an internal tax: if this be admitted, the same reasoning extends to all acts of parliament. The Americans will find themselves cramped by the Act of Navigation, and oppose that too.

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The Americans themselves make no distinction between external and internal taxes. M. Otis, their champion, scouts such a distinction, and the assembly shewed they were not displeased with him, by making him their representative at the congress of the states general of America.

The only question before your lordships is, whether the American colonies are a part of the dominions of the crown of Great Britain? If not, the parliament has no jurisdiction, if they are, as many statutes have declared them to be, they must be proper objects of our legislature: and by declaring them exempt from one statute or law, you declare them no longer subjects of Great Britain, and make them small independent communities not entitled to your protection.

[Speech of Lord Mansfield.]

Col. 175.

. . . But as a distinction has been taken between the power of laying taxes and making laws, I must declare, that after the most diligent searches on this head, I cannot find any distinction or difference whatever.

[Speech of Lord Camden.]

Cols. 178, 180.

. . . My position is this—I repeat it—I will maintain it to my last hour,—taxation and representation are inseparable;—this position is founded on the laws of nature; it is more, it is itself an eternal law

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of nature; for whatever is a man's own, is absolutely his own; no man hath a right to take it from him without his consent, either expressed by himself or representative; whoever attempts to do it, attempts an injury; whoever does it, commits a robbery; he throws down and destroys the distinction between liberty and slavery. Taxation and representation are coeval with and essential to this constitution.

In short, my lords, from the whole of our history, from the earliest period, you will find that taxation and representation were always united; so true are the words of that consummate reasoner and politician Mr. Locke. I before alluded to his book; I have again consulted him; and finding what he writes so applicable to the subject in hand, and so much in favour of my sentiments, I beg your lordships' leave to read a little of this book.

"The supreme power cannot take from any man, any part of his property, without his own consent;" and B. 2. p. 136-139, particularly 140. Such are the words of this great man, and which are well worth your serious attention. His principles are drawn from the heart of our constitution, which he thoroughly understood, and will last as long as that shall last; and, to his immortal honour, I know not to what, under providence, the Revolution and all its happy effects, are more owing, than to the prin-

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principles of government laid down by Mr. Locke. For these reasons, my lords, I can never give my assent to any bill for taxing the American colonies, while they remain unrepresented; for as to the distinction
5 of a virtual representation, it is so absurd as not to deserve an answer; I therefore pass it over with contempt.

5. *The Gentleman's Magazine and Historical Chronicle*, Vol. XXXVIII (1768).

10 Pages 269-270.

MR. URBAN,—The opposition of the colonies to the new method of taxation will probably bring the subject of virtual Representation again before the public. As I have never yet seen this kind of
15 representation precisely stated, give me leave to communicate to the public, thro' the channel of your Magazine, my Idea of it, in which you will find no essential difference between virtual and actual representation in England; but a very striking distinction between these, and no representation at all
20 of America.

My notion of Virtual Representation is this, A numerous society being willing to unite themselves under the same form of government, and to be
25 subject to the same laws, consent, for convenience sake, that the whole in a national assembly shall be represented by a part; and, to avoid confusion in choosing that part, they farther consent that certain classes among them shall have the privilege of elect-

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ing the members that are to compose it; but at the same time they stipulate, that as well those who represent as those who are represented; and those also who have not the privilege of electing in
5 common with those who have; all shall share alike in the advantages resulting from the deliberations of the national assembly; and all shall contribute alike, in proportion to their respective situations and circumstances, to the necessary expences of govern-
10 ment.

Thus, Mr. Urban, you see, that, according to this system, those who represent and those who are represented, and those who elect, and those who do not elect the representatives are all entitled to the
15 same benefits, and are subject alike to the same taxations, every other circumstance but that of the privilege of election being similar. And hence it follows that virtual representation in Great Britain is in effect the same as actual representation; the
20 laws enacted for the government of the whole, affecting the whole equally without the least distinction—To illustrate this still more clearly;

Birmingham is said not to be actually represented because, though a populous place, and a great manu-
25 facturing town, it sends no members to parliament; yet the inhabitants of Birmingham enjoy in every respect the same freedom and the same national advantages that the inhabitants of the towns do that are represented. No law was ever made that

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affected the property of the people of Birmingham but what affected the property of the people in like circumstances in every other part of the kingdom: so that Birmingham and every other town in England that sends no members to parliament, is to all intents and purposes virtually represented; because the representatives of the towns that elect make the same laws for those who do not elect, as for those who do.

10 Were it otherwise, and those who are actually represented were to be eased in any tax, by exempting them from the payment of it, and laying the burden upon those who are only virtually represented, would not the virtually represented part of
15 the people take the alarm, and protest against the acts of such a partial representation? Were a heavy tax, for instance, to be laid upon iron manufactured in the town of Birmingham, because virtually represented only; and a premium granted upon the
20 same iron manufactured in Stafford because actually represented, would the people in Birmingham submit quietly to such an unjust distinction?

This, in my opinion, is exactly the case of the colonies. The representatives of the people of England lay a tax upon the Americans, to which neither
25 they themselves nor their constituents, pay any part; and they may, by the same authority, whenever the colonies are in a capacity of bearing it, lay the weight of all the taxes for the support of govern-

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ment, and for the payment of the interest and principal of the national debt, upon the Americans, in ease of themselves and the people whom they represent; and they may at the same time exclude the Americans from whatever advantages in point of commerce and manufactures they may apprehend will clash with the interest of themselves and their constituents; hence I think it is self-evident that the virtual representation which it is contended the American is in possession of, is very different from the virtual representation which the Birmingham man possesses; because the virtual representative of the American, can put his hand in the American's pocket, and take out what sum he pleases, and he may at the same time clog him with whatever incapacity he pleases, without affecting himself in either of these cases; but the virtual representative of the Birmingham man must contribute shilling for shilling with the Birmingham man, and must likewise be himself subject, in like circumstances, to all the incapacities which he may think fit to impose upon him.

Were not this the case, would the numerous body of virtually represented inhabitants of this opulent kingdom, submit to be governed by the contemptible number of the actually represented inhabitants of it? It is unreasonable to think they would. But as the case stands, it were, perhaps, better that the numbers of the actually represented were still fewer than they are, than that they should be increased

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by electors like the present, whom experience has shewn, to be susceptible of every species of venality.

I am, Sir, &c. D. Y.

6. *Massachusetts State Papers*. [Letter of the Massachusetts House to the Earl of Shelburne, January 15, 1768.]

Page 138.

There are, my Lord, fundamental rules of the constitution, which it is humbly presumed, neither
10 the supreme legislative nor the supreme executive can alter. In all free states, the constitution is fixed; it is from thence, that the legislative derives its authority; therefore it cannot change the constitution without destroying its own foundation.
15 If, then, the constitution of Great Britain is the common right of all British subjects, it is humbly referred to your Lordship's judgment, whether the supreme legislative of the empire may rightly leap the bounds of it, in the exercise of power over the subjects in America, any more than over those in Britain.

20 *Writings of Samuel Adams*, I. [Letter of the Massachusetts House to the Marquis of Rockingham, January 22, 1768.]

Pages 170-171.

- 25 My Lord, the superintending power of that high court over all his Majesty's subjects in the empire, and in all cases which can consist with the fundamental rules of the constitution, was never questioned in this province, nor, as the House conceive,

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in any other. But, in all free states, the constitution is fixed; it is from thence, that the supreme legislative, as well as the supreme executive derives its authority. Neither, then, can break through the fundamental rules of the constitution, without destroying their own foundation.

[Letter of the Massachusetts House to Lord Camden, January 29, 1768.]

Page 174.

If in all free states, the constitution is fixed, and the supreme legislative power of the nation, from thence derives its authority; can that power overleap the bounds of the constitution, without subverting its own foundation? If the remotest subjects, are bound by the ties of allegiance, which this people and their forefathers have ever acknowledged; are they not by the rules of equity, intitled to all rights of that constitution, which ascertains and limits both sovereignty and allegiance? If it is an essential unalterable right in nature, ingrafted into the British constitution as a fundamental law, and ever held sacred and irrevocable by the subjects within the realm, and that what is a man's own is absolutely his own; and that no man hath a right to take it from him without his consent; may not the subjects of this province, with a decent firmness, which has always distinguished the happy subjects of Britain, plead and maintain this natural constitutional right?

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Massachusetts State Papers. [Extract from Circular Letter from the Massachusetts House to speakers of other Houses of Representatives. February 11, 1768.]

5 Page 134.

The House have humbly represented to the ministry, their own sentiments that His Majesty's high court of Parliament is the supreme legislative power over the whole Empire; that in all free states the
10 constitution is fixed, and as the supreme legislative derives its power and authority from the constitution, it cannot overleap the bounds of it, without destroying its own foundation; that the constitution ascertains and limits both sovereignty and
15 allegiance, and, therefore, His Majesty's American subjects, who acknowledge themselves bound by the ties of allegiance, have an equitable claim to the full enjoyment of the fundamental rules of the British Constitution. . . .

20 7. *The Writings of John Dickinson.* [Letters from a Farmer, 1767, 1768.]

Page 312.

The parliament unquestionably possesses a legal authority to regulate the trade of Great-Britain,
25 and all her colonies. Such an authority is essential to the relation between a mother country and her colonies; and necessary for the common good of all. He, who considers these provinces as states distinct from the British Empire, has very slender

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notions of justice, or of their interests. We are but parts of a whole; and therefore there must exist a power somewhere to preside, and preserve the connection in due order. This power is lodged in the parliament; and we are as much dependent on Great Britain, as a perfectly free people can be on another.

I have looked over every statute relating to these colonies, from their first settlement to this time; and I find every one of them founded on this principle, till the Stamp-Act administration. All before, are calculated to regulate trade, and preserve or promote a mutually beneficial intercourse between the several constituent parts of the empire; and though many of them imposed duties on trade, yet those duties were always imposed with design to restrain the commerce of one part, that was injurious to another, and thus to promote the general welfare. The raising a revenue thereby was never intended. . . .

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Pages 320, 321.

Our great advocate, Mr. Pitt, in his speeches on the debate concerning the repeal of the Stamp-Act, acknowledged, that Great-Britain could restrain our manufactures. His words are these—"This kingdom, as the supreme governing and legislative power, has always bound the colonies by her regulations and restrictions in trade, in navigation, in manu-

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factures—in every thing, except that of taking their money out of their pockets, without their consent.” Again he says, “We may bind their trade, confine their manufactures, and exercise every power whatever except that of taking their money out of their pockets, without their consent.”

Here then, my dear countrymen, rouse yourselves, and behold the ruin hanging over your heads. If you once admit, that Great-Britain may lay duties upon her exportations to us, for the purpose of levying money on us only, she then will have nothing to do, but to lay those duties on the articles which she prohibits us to manufacture—and the tragedy of American liberty is finished. We have been prohibited from procuring manufactures, in all cases, any where but from Great-Britain (excepting linens, which we are permitted to import directly from Ireland). We have been prohibited, in some cases, from manufacturing for ourselves; and may be prohibited in others. We are therefore exactly in the situation of a city besieged, which is surrounded by the works of the besiegers in every part but one. If that is closed up, no step can be taken, but to surrender at discretion. If Great-Britain can order us to come to her for necessaries we want, and can order us to pay what taxes she pleases before we take them away, or when we land them here, we are as abject slaves as France and Poland can shew in wooden shoes, and with uncombed hair.

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Page 328.

MY DEAR COUNTRYMEN,—An objection, I hear, has been made against my second letter, which I would willingly clear up before I proceed. “There is,” say these objectors, “a material difference between the Stamp-Act and the late Act for laying a duty on paper, &c that justifies the conduct of those who opposed the former, and yet are willing to submit to the latter. The duties imposed by the Stamp-Act were internal taxes; but the present are external, and therefore the Parliament may have a right to impose them.”

To this I answer, with a total denial of the power of parliament to lay upon these colonies any “tax” whatever.

This point, being so important to this, and to succeeding generations, I wish to be clearly understood.

To the word “tax,” I annex that meaning which the constitution and history of England require to be annexed to it; that is—that it is an imposition on the subject, for the sole purpose of levying money.

Page 332.

This language is clear and important. A “tax” means an imposition to raise money. Such persons therefore as speak of internal and external “taxes,” I pray may pardon me, if I object to that expression, as applied to the privileges and interests of these

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colonies. There may be internal and external impositions, founded on different principles, and having different tendencies, every "tax" being an imposition, tho' every imposition is not a "tax." But
5 all taxes are founded on the same principles; and have the same tendency.

Pages, 348, 349.

. . . In my opinion, there is no privilege these colonies claim, which they ought in duty and prudence more earnestly to maintain and defend, than
10 the authority of the British parliament to regulate the trade of all her dominions. Without this authority, the benefits she enjoys from our commerce, must be lost to her: The blessings we enjoy from our
15 dependence upon her, must be lost to us. Her strength must decay; her glory vanish; and she cannot suffer without our partaking in her misfortune. Let us therefore cherish her interests as our own, and give her every thing, that it becomes
20 freemen to give or to receive.¹

¹ Some of the difficulties in grasping the problems of the time may be seen from Franklin's comments after reading portions of the *Farmer's Letters*:

"I am not yet master of the idea these and the New England
25 writers have of the relation between Britain and her colonies. I know not what the Boston people mean by the 'subordination' they acknowledge in their Assembly to Parliament, while they deny its powers to make laws for them, nor what bounds the
30 Farmer sets to the power he acknowledges in Parliament to 'regulate the trade of the colonies,' it being difficult to draw lines between duties for regulation and those for revenue; and if the Parliament is to be the judge, it seems to me that establishing such principles of distinction will amount to little."

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8. *Massachusetts State Papers*.¹ [Speech of Governor Hutchinson to the Council and the House.]

Page 337.

5 . . . When our predecessors first took possession of this plantation, or colony, under a grant and charter from the Crown of England, it was their sense, and it was the sense of the kingdom, that they were to remain subject to the supreme authority
10 of Parliament. This appears from the charter itself, and from other irresistible evidence. This supreme authority has, from time to time, been exercised by Parliament, and submitted to by the colony, and hath been, in the most express terms, acknowledged
15 by the Legislature, and, except about the time of the anarchy and confusion in England, which preceded the restoration of King Charles the Second, I have not discovered that it has been called in question, even by private or particular persons,
20 until within seven or eight years last past. Our provincial or local laws have, in numerous instances, had relation to acts of Parliament, made to respect the plantations in general, and this colony in par-

25 ¹ This speech of the Governor was made in 1773. He evidently believed that it was wise to enter upon a full discussion of the power of Parliament and expected to be able to rout the leaders that denied that power. The source is valuable, because it shows so clearly at least three different positions—that of the Governor, that of the Council, and that of the House. Probably no other single
30 body of documents so cogently and ably presents the conflicting theories.

Source Problems in United States History

ticular, and in our Executive Courts, both Juries and Judges have, to all intents and purposes, considered such acts as part of our rule of law.

So much, however, of the spirit of liberty breathes
5 through all parts of the English constitution, that, although from the nature of government, there must be one supreme authority over the whole, yet this constitution will admit of subordinate powers with Legislative and Executive authority, greater
10 or less, according to local and other circumstances. Thus we see a variety of corporations formed within the kingdom, with powers to make and execute such by-laws as are for their immediate use and benefit, the members of such corporations still remaining
15 subject to the general laws of the kingdom. We see also governments established in the plantations, which, from their separate and remote situation, require more general and extensive powers of legislation within themselves, than those formed within
20 the kingdom, but subject, nevertheless, to all such laws of the kingdom as immediately respect them, or are designed to extend to them; and, accordingly, we, in this province have, from the first settlement of it, been left to the exercise of our Legislative and
25 Executive powers, Parliament occasionally, though rarely, interposing, as in its wisdom has been judged necessary.

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Page 338.

. . . At length the constitution has been called in question, and the authority of the Parliament of Great Britain to make and establish laws for the inhabitants of this province has been, by many, denied. What was at first whispered with caution, was soon after openly asserted in print; and, of late, a number of inhabitants, in several of the principal towns in the province, having assembled together in their respective towns, and have [having] assumed the name of legal town meetings, have passed resolves, which they have ordered to be placed upon their town records, and caused to be printed and published in pamphlets and newspapers.

Pages 338, 339.

. . . I know of no arguments, founded in reason, which will be sufficient to support these principles, or to justify the measures taken in consequence of them. It has been urged, that the sole power of making laws is granted, by charter, to a Legislature established in the province, consisting of the King, by his Representative the Governor, the Council, and the House of Representatives; that, by this charter, there are likewise granted, or assured to the inhabitants of the province, all the liberties and immunities of free and natural subjects, to all intents, constructions and purposes whatsoever, as if they had been born within the realms of England; that it is part of the liberties of English subjects, which

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has its foundation in nature, to be governed by laws made by their consent in person, or by their representative; that the subjects in this province are not, and cannot be represented in the Parliament of Great Britain, and, consequently, the acts of that Parliament cannot be binding upon them.

I do not find, gentlemen, in the charter, such an expression as sole power, or any words which import it. The General Court has, by charter, full power to make such laws, as are not repugnant to the laws of England. A favorable construction has been put upon this clause, when it has been allowed to intend such laws of England only, as are expressly declared to respect us. Surely then this is, by charter, a reserve of power and authority to Parliament to bind us by such laws, at least, as are made expressly to refer to us, and consequently, is a limitation of the power given to the General Court.

[The Governor insists that the charter in securing the Colonists the rights of Englishmen does not intend to declare that they are to be exempt from acts of Parliament, but only that their place of abode was to be part of the dominions.]

Pages 339-40.

They who claim exemption from acts of Parliament by virtue of their rights as Englishmen, should consider that it is impossible the rights of English subjects should be the same, in every respect, in all parts of the dominions. It is one of their rights as

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English subjects, to be governed by laws made by persons, in whose election they have, from time to time, a voice; they remove from the kingdom, where, perhaps, they were in the full exercise of this right, to the plantations, where it cannot be exercised, or where the exercise of it would be of no benefit to them. Does it follow that the government, by their removal from one part of the dominions to another, loses its authority over that part to which they remove, and that they are freed from the subjection they were under before; or do they expect that government should relinquish its authority because they cannot enjoy this particular right? Will it not rather be said, that by this, their voluntary removal, they have relinquished for a time at least, one of the rights of an English subject, which they might, if they pleased, have continued to enjoy, and may again enjoy, whensoever they will return to the place where it can be exercised?

If what I have said shall not be sufficient to satisfy such as object to the supreme authority of Parliament over the plantations, there may something further be added to induce them to an acknowledgment of it, which, I think, will well deserve their consideration. I know of no line that can be drawn between the supreme authority of Parliament and the total independence of the colonies: it is impossible there should be two independent Legislatures

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in one and the same state; for, although there may be one head, the King, yet the two Legislative bodies will make two governments as distinct as the kingdoms of England and Scotland before the union. . . .

5 [Answer of the Council to the speech of the Governor, of the sixth of January . . . January 25, 1773.]

[The Council refers to the Governor's statement that the colonists were "to remain subject to the supreme authority of Parliament," and then proceeds as follows:]

10 Pages 344, 345.

. . . In order to a right conception of this matter, it is necessary to guard against any improper idea of the term supreme authority. In your idea of it, your Excellency seems to include unlimited authority; for, you are pleased to say, that you know of no
15 line which can be drawn between the supreme authority of Parliament, and the real independence of the colonies. But if no such line can be drawn, a denial of that authority, in any instance whatever,
20 implies and amounts to a declaration of total independence. But if supreme authority, includes unlimited authority, the subjects of it are emphatically slaves; and equally so, whether residing in the colonies, or Great Britain. And, indeed, in this re-
25 spect, all the nations on earth, among whom government exists in any of its forms, would be alike conditioned, excepting so far as the mere grace and favor of their Governors might make a difference,

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for from the nature of government there must be, as your Excellency has observed, one supreme authority over the whole.

We cannot think, that when our predecessors took possession of this colony, it was their sense, or the sense of the kingdom, that they were to remain subject to the supreme authority of Parliament in this idea of it. Nor can we find, that this appears from the charter; or, that such authority has ever been exercised by Parliament, submitted to by the colony, or acknowledged by the Legislature.

Supreme, or unlimited authority, can with fitness, belong only to the Sovereign of the universe; and that fitness is derived from the perfection of his nature. To such authority, directed by infinite wisdom and infinite goodness, is due both active and passive obedience; which, as it constitutes the happiness of rational creatures, should, with cheerfulness, and from choice, be unlimitedly paid by them. But, this, can be said with truth, of no other authority whatever. If, then, from the nature and end of government, the supreme authority of every government is limited, the supreme authority of Parliament must be limited; and the inquiry will be, what are the limits of that authority, with regard to this colony? To fix them with precision, to determine the exact lines of right and wrong in this case, as in some others, is difficult; and we have not the presumption to attempt it. But we humbly

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hope, that, as we are personally and relatively, in our public and private capacities, for ourselves, for the whole province, and posterity, so deeply interested in this important subject, it will not be deemed
5 arrogance to give some general sentiments upon it, especially as your Excellency's speech has made it absolutely necessary.

Pages 346, 347.

The grant of power to the General Court to make
10 laws, runs thus—"full power and authority, from time to time, to make and ordain, and establish, all manner of wholesome and reasonable laws, orders, statutes and ordinances, directions and instructions, either with penalties or without, so as the same be
15 not repugnant or contrary to the laws of this our realm of England, as they shall judge to be for the good and welfare of our said province." We humbly conceive an inference very different from your Excellency's, and a very just one too, may be drawn
20 from this clause, if attention be given to the description of the orders and laws that were to be made. They were to be wholesome, reasonable, and for the good and welfare of the province; and in order that they might be so, it is provided, that
25 they be not repugnant or contrary to the laws of the realm, which were then in being; by which proviso, all the liberties and immunities of free and natural subjects within the realm, were more effectually secured to the inhabitants of the province,

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agreeable to another clause in the charter, whereby those liberties and immunities are expressly granted to them; and accordingly, the power of the General Court is so far limited, that they shall not make
5 orders and laws to take away or diminish those liberties and immunities.

Page 349.

Your Excellency next observes, "that it is impossible the rights of English subjects should be
10 the same in every respect, in all parts of the dominions," and instances in the right of "being governed by laws made by persons, in whose election they have a voice." When "they remove from the kingdom to the plantations, where it cannot be en-
15 joyed," you ask, "will it not be said, by this voluntary removal, they have relinquished, for a time at least, one of the rights of an English subject, which they might, if they pleased, have continued to en-
20 joy, and may again enjoy, whenever they will return to the place where it can be exercised?"

When English subjects remove from the kingdom to the plantations, with their property, they not only relinquish that right *de facto*, but it ought to cease in the kingdom *de jure*. But it does not from thence
25 follow, that they relinquish that right in reference to the plantation or colony, to which they remove. On the contrary, having become inhabitants of that colony, and qualified according to the laws of it,

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they can exercise that right, equally with the other inhabitants of it. And their right, on like conditions, will travel with them through all the colonies, wherein a Legislature, similar to that of the kingdom, is established. And therefore, in this respect, and, we suppose, in all other essential respects, it is not impossible the rights of English subjects should be the same in all parts of the dominions, under a like form of Legislature.

10 [Answer of the House of Representatives to the speech of the Governor, of the sixth of January . . . January 26, 1773.]

Page 352.

You are pleased to say, that, "when our predecessors first took possession of this plantation, or colony, under a grant and charter from the Crown of England, it was their sense, and it was the sense of the kingdom, that they were to remain subject to the supreme authority of Parliament;" whereby
15 we understand your Excellency to mean, in the sense of the declaratory act of Parliament afore mentioned, in all cases whatever. And, indeed, it is difficult, if possible, to draw a line of distinction between the universal authority of Parliament over the colonies,
20 and no authority at all. It is, therefore, necessary for us to inquire how it appears, for your Excellency has not shown it to us, that when, or at the time that our predecessors took possession of this plantation, or colony, under a grant and charter from
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the Crown of England, it was their sense, and the sense of the kingdom, that they were to remain subject to the authority of Parliament. In making this inquiry, we shall, according to your Excellency's recommendation, treat the subject with calmness and candor, and also with a due regard to truth.

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Page 354.

We have brought the first American charters into view, and the state of the country when they were granted, to show, that the right of disposing of the lands was, in the opinion of those times, vested solely in the Crown; that the several charters conveyed to the grantees, who should settle upon the territories therein granted, all the powers necessary to constitute them free and distinct states; and that the fundamental laws of the English constitution should be the certain and established rule of legislation, to which, the laws to be made in the several colonies, were to be, as nearly as conveniently might be, conformable, or similar, which was the true intent and import of the words, "not repugnant to the laws of England," "consonant to reason," and other variant expressions in the different charters. And we would add, that the King, in some of the charters, reserves the right to judge of the consonance and similarity of their laws with the English constitution, to himself, and not to the Parlia-

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ment; and, in consequence thereof, to affirm, or within a limited time, disallow them.

Page 356.

Your Excellency says, "it appears from the charter itself, to have been the sense of our predecessors, who first took possession of this plantation, or colony, that they were to remain subject to the authority of Parliament." You have not been pleased to point out to us, how this appears from the charter, unless it be in the observation you make on the above mentioned clause, viz.: "that a favorable construction has been put upon this clause, when it has been allowed to intend such laws of England only, as are expressly made to respect us," which you say, "is by charter, a reserve of power and authority to Parliament, to bind us by such laws, at least, as are made expressly to refer to us, and consequently is a limitation of the power given to the General Court." But, we would still recur to the charter itself, and ask your Excellency, how this appears, from thence, to have been the sense of our predecessors? Is any reservation of power and authority to Parliament thus to bind us, expressed or implied in the charter? It is evident, that King Charles the I. the very Prince who granted it, as well as his predecessor, had no such idea of the supreme authority of Parliament over the colony, from their declarations before recited.

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Your Excellency will then allow us, further to ask, by what authority, in reason or equity, the Parliament can enforce a construction so unfavorable to us.

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5 Pages 363, 364.

Your Excellency tells us, "you know of no line that can be drawn between the supreme authority of Parliament and the total independence of the colonies." If there be no such line, the consequence
10 is, either that the colonies are the vassals of the Parliament, or that they are totally independent. As it cannot be supposed to have been the intention of the parties in the compact, that we should be reduced to a state of vassalage, the conclusion is, that it was
15 their sense, that we were thus independent. "It is impossible," your Excellency says, "that there should be two independent Legislatures in one and the same state." May we not then further conclude, that it was their sense, that the colonies were, by
20 their charters, made distinct states from the mother country? Your Excellency adds, "for although there may be but one head, the King, yet the two Legislative bodies will make two governments as distinct as the kingdoms of England and Scotland, before the union." Very true, may it please your
25 Excellency; and if they interfere not with each other, what hinders, but that being united in one head and common Sovereign, they may live happily

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in that connection, and mutually support and protect each other? Notwithstanding all the terrors which your Excellency has pictured to us as the effects of a total independence, there is more reason
5 to dread the consequences of absolute uncontrolled power, whether of a nation or a monarch, than those of a total independence.

Page 364.

If your Excellency expects to have the line of
10 distinction between the supreme authority of Parliament, and the total independence of the colonies drawn by us, we would say it would be an arduous undertaking, and of very great importance to all the other colonies; and therefor, could we conceive
15 of such a line, we should be unwilling to propose it, without their consent in Congress.

[Speech of the Governor to both houses, February 16, 1773.]

Page 369.

20 Gentlemen of the Council,—I will only observe, that your attempts to draw a line as the limits of the supreme authority in government, by distinguishing some natural rights, as more peculiarly exempt from such authority than the rest, rather
25 tend to evince the impracticability of drawing such a line; and, that some parts of your answer seem

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to infer a supremacy in the province, at the same time that you acknowledge the supremacy of Parliament; for otherwise, the rights of the subjects cannot be the same in all essential respects, as you suppose them to be, in all parts of the dominions, “under a like form of Legislature.”

Page 370.

Gentlemen of the House of Representatives,—
... Let me then observe to you, that as English subjects, and agreeable to the doctrine of feudal tenure, all our lands and tenements are held mediately, or immediately of the Crown, and although the possession and use, or profits, be in the subject, there still remains a dominion in the Crown. When any new countries are discovered by English subjects, according to the general law and usage of nations, they become part of the state, and, according to the feudal system, the lordship or dominion, is in the Crown; and a right accrues of disposing of such territories, under such tenure, or for such services to be performed, as the Crown shall judge proper; and whensoever any part of such territories, by grant from the Crown, becomes the possession or property of private persons, such persons, thus holding, under the Crown of England, remain, or become subjects of England, to all intents and purposes, as fully, as if any of the royal manors, forests, or other territory, within the realm, had been granted to them

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upon the like tenure. But, that it is now, or was, when the plantations were first granted, the prerogative of the Kings of England to alienate such territories from the Crown, or to constitute a number
5 of new governments, altogether independent of the sovereign legislative authority of the English empire, I can by no means concede to you.

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Page 371.

. . . Thus by not distinguishing between the Crown of England, and the Kings and Queens of England,
10 in their personal or natural capacities, you have been led into a fundamental error, which must prove fatal to your system.

[The Governor next asserts that the first charter (1628-29) grants exemption from taxes and impositions upon
15 goods imported into New England or exported to England, and that this exemption implies the right to tax after the term of twenty-one years.]

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Page 375.

Thus, I think, I have made it appear that the
20 plantations, though not strictly within the realm, have, from the beginning, been constitutionally subject to the supreme authority of the realm, and are so far annexed to it, as to be, with the realm and other dependencies upon it, one entire dominion;
25 and that the plantation, or colony of Massachusetts Bay in particular, is holden as feudatory of the imperial Crown of England. Deem it to be no part

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of the realm, it is immaterial; for, to use the words of a very great authority in a case, in some respects analogous, "being feudatory, the conclusion necessarily follows, that it is under the government of the King's laws and the King's courts, in cases proper for them to interpose, though (like Counties Palatine) it has peculiar laws and customs, *jura regalia*, and complete jurisdiction at home."

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Page 378.

. . . Upon the first advice of the revolution, in England, the authority which assumed the government, instructed their agents to petition Parliament to restore the first charter, and a bill for that purpose, passed the House of Commons, but went no further. Was not this owning the authority of Parliament? By an act of Parliament, passed in the first year of King William and Queen Mary, a form of oaths was established, to be taken by those Princes, and by all succeeding Kings and Queens of England, at their coronation; the first of which is, that they will govern the people of the kingdom, and the dominions thereunto belonging, according to the statutes in Parliament agreed on, and the laws and customs of the same. When the colony directed their agents to make their humble application to King William, to grant the second charter, they could have no other pretence, than, as they were inhabitants of part of the dominions of Eng-

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land; and they also knew the oath the King had taken, to govern them according to the statutes in Parliament. Surely, then, at the time of this charter, also, it was the sense of our predecessors,
5 as well as of the King and of the nation, that there was, and would remain, a supremacy in the Parliament. About the same time, they acknowledge, in an address to the King, that they have no power to make laws repugnant to the laws of England. . . .

10 [Answer of the Council to the Governor's speech of the Sixteenth of February . . . February 25, 1773.]
Pages 381, 382.

[The Council again asserts that by the principle of the English Constitution the colonists are free from Parlia-
15 mentary taxation. But of even more significance, probably, is the contention presented in the passage below:]

. . . To illustrate our meaning, we beg leave to quote a passage from your speech, at the opening of the session, where your Excellency says, "so much of the
20 spirit of liberty breathes through all parts of the English constitution, that, although from the nature of the government, there must be one supreme authority over the whole, yet, this constitution will admit of subordinate powers, with legislative and
25 executive authority, greater or less, according to local and other circumstances." This is very true, and implies that the legislative and executive authority granted to the subordinate powers, should

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extend and operate, as far as the grant allows; and that, if it does not exceed the limits prescribed to it, and no forfeiture be incurred, the supreme power has no rightful authority to take away or diminish it, or to substitute its own acts, in cases wherein the acts of the subordinate power can, according to its constitution, operate. To suppose the contrary, is to suppose, that it has no property in the privileges granted to it; for, if it holds them at the will of the supreme power, which it must do, by the above supposition, it can have no property in them. Upon which principle, which involves the contradiction, that what is granted, is, in reality, not granted, no subordinate power can exist. But, as in fact, the two powers are not incompatible, and do subsist together, each restraining its acts to their constitutional objects, can we not from hence, see how the supreme power may supervise, regulate, and make general laws for the kingdom, without interfering with the privileges of the subordinate powers within it? And also, see how it may extend its care and protection to its colonies, without injuring their constitutional rights? What has been here said, concerning supreme authority, has no reference to the manner in which it has been, in fact, exercised;¹ but is wholly confined to its general nature. And,

¹ By these words the Council seems to say: in practice and in fact the empire has had just the kind of organization we contend for, and is not an empire with supreme unlimited authority at the center.

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if it conveys any just idea of it, the inferences that have been, at any time, deduced from it, injurious to the rights of the colonists, are not well founded; and have, probably, arisen from a misconception of
5 the nature of that authority.

[Answer of the House, March 2, 1773.]

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Your Excellency says, that, "as English subjects, and agreeable to the doctrine of the feudal tenure,
10 all our lands are held mediately, or immediately, of the Crown." We trust, your Excellency does not mean to introduce the feudal system in its perfection; which, to use the words of one of our greatest historians, was "a state of perpetual war, anarchy,
15 and confusion, calculated solely for defence against the assaults of any foreign power; but, in its provision for the interior order and tranquillity of society, extremely defective. A constitution so contradictory to all the principles that govern man-
20 kind, could never be brought about, but by foreign conquest or native usurpation."

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Your Excellency says, "you can by no means concede to us that it is now, or was, when the plan-
25 tations were first granted, the prerogative of the Kings of England, to constitute a number of new governments, altogether independent of the sovereign authority of the English empire." By the

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feudal principles, upon which you say "all the grants which have been made of America, are founded, the constitutions of the Emperor [Empire], have the force of law." If our government be considered as merely feudatory, we are subject to the King's absolute will, and there is no authority of Parliament, as the sovereign authority of the British empire. Upon these principles, what could hinder the King's constituting a number of independent governments in America. That King Charles the I. did actually set up a government in this colony, conceding to it powers of making and executing laws, without any reservation to the English Parliament, of authority to make future laws binding therein, is a fact which your Excellency has not disproved, if you have denied it. Nor have you shewn that the Parliament or nation objected to it; from whence we have inferred that it was an acknowledged right.

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Your Excellency says, that "persons thus holding under the Crown of England, remain, or become subjects of England," by which, we suppose your Excellency to mean, subject to the supreme authority of Parliament. . . . We apprehend, with submission, your Excellency is mistaken in supposing that our allegiance is due to the Crown of England. Every man swears allegiance for himself, to his own King, in his natural person. "Every subject is presumed

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by law to be sworn to the King, which is to his natural person," says Lord Coke. Rep. on Calvin's case.

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5 Your Excellency says, that, by "our not distinguishing between the Crown of England, and the Kings and Queens of England, in their personal or natural capacities, we have been led into a fundamental error." Upon this very distinction we have
10 availed ourselves. We have said, that our ancestors considered the land, which they took possession of in America, as out of the bounds of the kingdom of England, and out of the reach and extent of the laws of England; and, that the King also, even in
15 the act of granting the charter, considered the territory as not within the realm; that the King had an absolute right in himself to dispose of the lands, and that this was not disputed by the nation; nor could the lands, on any solid grounds, be claimed
20 by the nation; and, therefore, our ancestors received the lands, by grant, from the King; and, at the same time, compacted with him, and promised him homage and allegiance, not in his public or politic, but natural capacity only. If it be difficult
25 for us to show how the King acquired a title to this country in his natural capacity, or separate from his relation to his subjects, which we confess, yet we conceive it will be equally difficult for your Excel-

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lency to show how the body politic and nation of England acquired it. . . .

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Your Excellency seems chiefly to rely upon our ancestors, after the revolution, "proclaiming King William and Queen Mary, in the room of King James," and taking the oaths to them, "the alteration of the form of oaths, from time to time," and finally, "the establishment of the form, which every one of us has complied with, as the charter, in express terms requires, and makes our duty." We do not know that it has ever been a point in dispute, whether the Kings of England were ipso facto Kings in, and over, this colony, or province. The compact was made between King Charles the I. his heirs and successors, and the Governor and company, their heirs and successors.

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We cannot help, before we conclude, expressing our great concern, that your Excellency has thus repeatedly, in a manner, insisted upon our free sentiments on matters of so delicate a nature and weighty importance. The question appears to us, to be no other, than, whether we are the subjects of absolute unlimited power, or of a free government, formed on the principles of the English constitution. If your Excellency's doctrine be true, the people of this

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province hold their lands of the Crown and people of England; and their lives, liberties, and properties, are at their disposal, and that, even by compact and their own consent. They were subject to the
5 King as the head *alterius populi* of another people, in whose Legislative they have no voice or interest. They are, indeed, said to have a constitution and a Legislative of their own; but your Excellency has explained it into a mere phantom; limited, controlled, superseded, and nullified, at the will of
10 another. Is this the constitution which so charmed our ancestors, that, as your Excellency has informed us, they kept a day of solemn thanksgiving to Almighty God, when they received it? And were they
15 men of so little discernment, such children in understanding, as to please themselves with the imagination, that they were blessed with the same rights and liberties which natural born subjects in England enjoyed, when, at the same time, they had fully
20 consented to be ruled and ordered by a Legislative, a thousand leagues distant from them, which cannot be supposed to be sufficiently acquainted with their circumstances, if concerned for their interest, and in which, they cannot be in any sense represented?

PROBLEM III

II.—The Power of a Court to Declare a Law
Unconstitutional

The Power of a Court to Declare a Law Unconstitutional

I. THE HISTORICAL SETTING OF THE PROBLEM

THE origin of the historical background of the power of the courts in the American governmental system is a subject of interest. Particularly in recent years, there has been much discussion of the practice of declaring laws void. Some persons have declared that the courts have usurped authority; they maintain that no justification can be found, in the constitutions or in any evident purpose of the framers, for the exercise of any such power. The problem, which the following sources enable us to study in part, presents its real difficulties; but the student should notice that the selections here given are not chosen for the purpose of giving him an opportunity to decide with full assurance whether or not the men that made our constitutions consciously purposed to bestow this authority on the courts. Perhaps that question cannot be answered in all cases with perfect confidence; some writers contend that the men of the Federal Convention expected that the courts would declare void laws that violated the Constitution; but such writers necessarily reach this conclusion from the examination of more than the debates in the Convention; and we should remember that, even if the Federal Courts were by express purpose given this authority, (a) the principle had been asserted in the state courts with reference to

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their power to declare state acts void though there is no evidence of an explicit purpose of the people to bestow such power; (b) even should we find such explicit bestowal or express purpose, we should be interested to know why and how such a step was taken.

If we make no pretense of being able, with the sources here presented, to decide whether the courts have seized upon undelegated power, we can see something of the historical background and the road traveled. We can see something of the arguments on which men relied when they asserted that courts possessed this power and duty. The line of argument is *itself* an historical fact, perhaps more important for us than would be an express purpose in the minds of constitution makers, if any such purpose could be found.

Of great significance is the close relation between the rise of this judicial power and the main argument of the American Revolution—that Parliament was not possessed of unlimited authority, an argument chiefly resting upon what were considered the fundamentals of British liberty.

"The prevailing reason at this time," said Hutchinson in 1765, "is that the Act of Parliament is against Magna Charta, and the Natural Rights of Englishmen, and therefore, according to Lord Coke, null and void." The sources should, therefore, be studied in connection with the sources on the Revolution (II). Some of the selections that are given to show the American position in the decade before the Revolution would be quite as applicable to explain the rise of judicial authority. (Note especially Problem II, selections 1 and 5.) Even such an incomplete study as we can here make will lead us to see that institutions and constitutions grow and are not made out of hand by sudden inspiration.

Between 1780 and 1787, state judges exercised this power or stated the principle on various occasions—

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Holmes *vs.* Walton (New Jersey, 1780); Caton *vs.* Commonwealth (Virginia, 1782); Trevett *vs.* Weeden (Rhode Island, 1786); Bayard *vs.* Singleton (North Carolina, 1787). And on sundry occasions, after 1787 and before 1803, similar assertions were made. Noteworthy are the statements appearing in the answers of some of the states to the Virginia and Kentucky resolutions. (See H. V. Ames, *State Documents on Federal Relations*, pp. 16-26.)

In 1803, Chief Justice Marshall, in giving the opinion of the Federal Supreme Court on the case of *Marbury vs. Madison* (1 Cranch Reports, 137), declared a portion of the Judiciary Act of 1789 unconstitutional. This was the first time that the Federal Supreme Court exercised this power. In doing so Marshall presented at considerable length the reasoning on which the power of the Court acted. He referred to the fact that the judicial power is evidently extended by the Constitution to "all cases arising under the constitution" and he pointed to various explicit restrictions on Congressional authority, and announced that, in consequence, "the framers of the Constitution contemplated that instrument as a rule for the government of courts, as well as of the legislature." He also mentioned, without emphasis or extended comment, the statement in the Constitution that the Constitution laws and treaties are the supreme law of the land. Still, Marshall's decision rests chiefly on statements concerning the nature of a written constitution. We find in Marshall's argument, for it is an argument, little or nothing new; perhaps Hamilton's and Iredell's arguments which were given some years before are more cogent and convincing. However that may be, the sources in this volume will enable us to see that the principle had been long under discussion before 1803. It should be noticed, moreover, that by no means everything throwing light on the development is here pre-

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sented. If we had space to print everything, the display of opinion upholding this power of the court would be more impressive; but the general subject and the main line of reasoning are probably made sufficiently clear by the sources here gathered.

II. INTRODUCTIONS TO THE SOURCES

1. *The Law of Nations, or Principles of the Law of Nature applied to the conduct and affairs of nations and sovereigns*, by Emmerich de Vattel. (Translation from the French. Fourth edition, London, 1811.)

The author was a Swiss. His volume first appeared in Leyden in 1758. The English translation was first published in 1760. It is not particularly original, rather a clever compendium of the principles of political theory and of international law which had been stated by others; it is not on that account less valuable, probably, for it was much used and referred to. Next to the English philosopher Locke, Vattel seems more than any other philosopher to have furnished the Americans, if not with principles, with statements of principles useful in the argument against unlimited Parliamentary authority.

2. *The Works of John Adams, Second President of the United States: with a life of the author, notes and illustrations*, by his grandson, Charles Francis Adams, Vol. II. (Boston, 1850.)

John Adams, then a young lawyer, listened to the argument of Otis on the issuing of writs of assistance. He took hurried and condensed notes, and these are almost the only original and contemporary source of this famous speech. The full notes can be found in the Appendix to Volume II of the *Works*, also in *Reports of Cases argued and adjudged in the Superior Court of Judi-*

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cature of the Province of Massachusetts Bay, between 1761 and 1772, by Josiah Quincy, Jr. (Boston, 1865.) A very learned discussion by Horace Gray is given in the Appendix to the *Quincy Reports*.

3. *Reports of cases argued and decided in the Court of Appeals of Virginia*, by Daniel Call, Vol. IV. (Richmond, 1833.)

In the case, *Caton vs. the Commonwealth*, the court did not declare an act of the legislature of Virginia void, but refused to recognize a pardon granted by one branch of the legislature. The decision was rendered in 1782 or 1783. Justice George Wythe was long an influential judge and lawyer.

4. *American Criminal Trials* (collected), by Peleg W. Chandler, Vol. II. (Boston, 1844.)

From this book we have selected portions of a speech by James Mitchell Varnum in the case of *Trevett vs. Weeden* (a Rhode Island case, 1786). Weeden was brought before the court charged with refusal to take paper money. The act under which the action was brought provided among other things that there should be no jury. The court declared the law void. Varnum's speech was originally published in a pamphlet called *The Case of Trevett against Weeden, on Information and Complaint for Refusing Paper Bills in Payment for Butcher's Meat at Par with Specie*, by J. M. Varnum. (Providence, 1787.)

5. *North Carolina Reports, embracing "Notes of a few discussions in the superior courts of the State of North Carolina . . ."*, by Francis Xavier Martin; second edition by William H. Battle. (Raleigh, 1843.)

The case of *Bayard vs. Singleton* (1787) turned on the question of title to property which had belonged to a British citizen whose property had been confiscated. The defendant's counsel asked for a dismissal of the suit

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on the ground that an act of the legislature provided that, if a claimant of property made an affidavit that he holds the disputed property under a sale from a commissioner of forfeited estates, the courts should dismiss the suit on motion—*i. e.*, without trial and without a jury. The court refused to adopt this summary method.

6. *Life and Correspondence of James Iredell, one of the Associate Justices of the Supreme Court of the United States*, by Griffith J. McRee. Two vols. (New York, 1857, 1858.)

The reference in this selection to the "determination of our judges" at Newbern, is to the decision of the court of North Carolina in the case of *Bayard vs. Singleton*, 1787. Iredell was long prominent in the state, an able lawyer, and was one of the counsel in this case. Richard D. Spaight was a member of the North Carolina delegation to the Federal Convention of 1787.

7. *The Records of the Federal Convention of 1787*, edited by Max Farrand. Three vols. (New Haven, 1911.)

The sources for a study of the work of the Convention are to be found in various volumes; they were printed at various times. The editor of the *Records* sought to bring together and to print all available sources. No stenographic reports were made in the Convention, and the official journal is extremely meager. The most important source is the notes of James Madison; other delegates took a few notes and some of these notes are valuable. The selections which are given below are partly from Madison's notes; one is from the notes of William Pierce, a delegate to the Convention from Georgia. One selection is from a speech made by Oliver Ellsworth in the Connecticut Convention for the ratification of the Constitution of the United States.

8. *The Federalist, A Commentary on the Constitution of the United States* by Alexander Hamilton, James Madison, and

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John Jay, edited by Paul Leicester Ford. (New York, 1898.)

The papers of the *Federalist* were originally printed in 1787 and 1788 in the papers of New York. They generally appeared in the *Independent Journal* and also the *New York Packet*, sometimes in other papers, over the signature of Publius. The first was published October 27, 1787, and numbers appeared thereafter at intervals of a few days during succeeding months. They were widely copied and were widely read. Jay wrote but five of the numbers, Hamilton and Madison the rest. There were eighty-five in all. A collected edition was published in New York in 1788. An edition of the *Federalist* with historical introduction and notes by H. B. Dawson (New York, 1863) contains a bibliography.

9. *The Works of James Wilson, Associate Justice of the Supreme Court of the United States, and Professor of Law in the College of Philadelphia, being his public discourses upon jurisprudence and the political science, including lectures as Professor of Law, 1790-2*, edited by James DeWitt Andrews. Two vols. (Chicago, 1896.)

Wilson was one of the ablest members of the Federal Convention of 1787. The extracts here presented are from his lectures at the College of Philadelphia, afterward united with the University of Pennsylvania. The date of the particular lecture is, probably, sometime in the winter of 1790-91. He was at that time an associate justice of the Federal Supreme Court. There is an earlier edition of Wilson's works edited by Bird Wilson (Philadelphia, 1804), in three volumes.

10. *Reports of Cases ruled and adjudged in the several courts of the United States and of Pennsylvania, held at the seat of the Federal Government*, by A. J. Dallas, Vol. II. (Second edition, 1907.)

The words quoted in the present volume are from a

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charge to the jury in a case in the Federal Circuit Court in the Pennsylvania district (1795). In this case, Van Horne's Lessee *vs.* Dorrance, Justice Paterson, a federal justice, declared a state law in conflict with a state constitution null and void. The selections from the charge are valuable because Paterson had been a member of the Federal Convention, because the power of the court is clearly stated, and because of the early date at which the opinions were expressed.

11. *Reports of cases argued and determined in the General Court and Court of Appeals of the State of Maryland, from 1800 to 1805 inclusive*, by Thomas Harris and Reverdy Johnson, Vol. I. (Annapolis, 1821.)

In the case of *Whittington vs. Polk* a law was not proclaimed void, but the right of the court to declare a law void, though conceded by counsel, was discussed at length.

III. QUESTIONS AND SUGGESTIONS FOR STUDY

1. Does Vattel think that the legislature can change the constitution? What does he seem to mean by the constitution? Were there written constitutions in Europe as far as you know when this book of his was written? Notice the expression "The constitution ought to possess stability" in the sources given in this division of this volume, and also in the preceding. Notice how often statements similar to that of Vattel appear.
2. What do you suppose was James Otis's idea of a constitution? What power did he ascribe to the court? Were there any English authorities that appeared to say that the courts could declare an act void? On what ground could a court thus act?
3. Do you see here and in other documents evidence that the Revolutionary argument rested on the belief that some actions of Parliament might be unconstitutional and hence illegal?

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4. Is there evidence that, in part at least, the argument of the Colonists against Parliament was similar to or identical with the argument in favor of judicial power to declare a law void?
5. State briefly the announcement of Justice Wythe in *Caton vs. Commonwealth*.
6. Rhode Island did not, in the Revolutionary time, adopt a new constitution. Does Varnum nevertheless argue that the legislature was bound? How? What two writers does he quote? Does he give evidence of using the main line of argument used by the Americans against Parliamentary authority—*viz.*, that there are limits on legislative power?
7. Does a court in the case of *Bayard vs. Singleton* declare the independence of the judiciary? Does the right of a court to declare a law void arise from the independence of the judiciary? How does a court, by supposing extreme examples of legislative power, argue that the legislature must obey the constitution and that the courts must recognize the constitution as law?
8. How does Iredell deliberately connect the character and purpose of the constitution directly with the experiences of the Revolution?
9. How does he meet the assertion that the remedy for a legislative breach of the constitution is only petition or insurrection?
10. Does he admit that a lower court can declare a law void?
11. How does Spaight point out the dangers of judicial power? What does he think would be the consequences of recognizing judicial right to call laws void?
12. What remedy does Spaight think exists for unconstitutional acts?
13. Does Iredell in his letter to Spaight think Parliament is bound by natural justice? Does he believe that constitutions confide all power to the majority?
14. Do the judges, according to Iredell, act as arbiters on application—*i. e.*, is the court a sort of external authority called in to settle differences of opinion between legis-

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lators, or even between legislators and people, or does it act only in a case?

15. What two examples does he propose of the necessity of judicial authority?
16. Does he think the courts likely to abuse their power? Why not?
17. Where and how often in the sources here given do you find the words "fundamental law"? Was the expression used of an unwritten constitution before it was of a written constitution?
18. What is the argument of Iredell to the effect that courts must recognize constitutional restraints in behalf of the individual liberty?
19. Is it quite plain that Iredell and Spaight agreed in asserting that the constitution bound the legislature? If so, where did they differ?
20. Was the principle of the power of the courts to declare a law void announced in the Federal Convention?
21. Do you think from the sources here given that the framers certainly intended that the courts should have this power, or do you think that we must be uncertain?
22. Is there evidence in documents already given in this volume that the principle had been thoroughly stated before the Federal Convention met?
23. Why did Gerry object to making the judges a part of a council of revision? What was King's contention?
24. What was Wilson's argument in the convention? Does he think that judges might have the power to declare law void and might also act as part of a council of revision? Why did he wish to have the judges members of the council of revision?
25. Why did Luther Martin object to associating judgments with the revisionary power?
26. Does Madison desire to have the judges given veto power—*i. e.*, power of objecting to acts before they become laws? Does he appear to believe that they might also declare laws void?
27. Does the fact that the motion to associate the judges with

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the executive in a council of revision was lost, indicate that the judges were supposed to have authority and to declare acts void when they were acting in their judicial capacity?

28. What was Mercer's argument?
29. Did Gouverneur Morris think that judges should recognize a direct violation of the constitution as a law?
30. How did Ellsworth speak of the judicial department? Is it plain that he looked on the courts as instruments for maintaining the constitution?
31. What is Hamilton's argument from the general principle as to the exercise of delegated authority? Does he appear to assert that, once the authority of congress or legislature is recognized to be delegated authority, the validity of its acts must be passed on just as any act of an agent with authority delegated by a principal?
32. Hamilton asserts that the courts were designed by the people to be an intermediary body. Have you found that other persons make this assertion or the assertion that the courts, acting in their field, are independent? Does this portion of Hamilton's argument on the whole agree with the rest of it?
33. How does Hamilton meet the declaration that, acknowledging the binding force of the constitution, the legislature must nevertheless judge of its own power?
34. According to Hamilton, does the power of the courts make them superior to the legislature?
35. Does Hamilton speak of the power of courts to select one of two contradictory legislative enactments? Is there a similar line of reasoning in Iredell's statement?
36. How does Hamilton meet the assertion that the courts might substitute their own pleasure for the constitutional intention of the legislature?
37. Is it apparent from the various sources that the power in question is not the peculiar right or duty of the Federal Supreme Court, but, rather, belongs to courts in general?
38. Does Wilson think that Parliament is controlled by natural

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- or divine law? That courts will so hold? What additional restraint on legislative power exists in America?
39. In Wilson's judgment does the power of enforcing the constitution make the courts superior to the legislature?
 40. What does Justice Paterson assert to be the position of the court? Is it inferior to other branches? Does the power to interpret and declare the constitution rest on superior power or on equality with other branches?
 41. Does Justice Chase rest the power of the court on superiority to other branches of the government or on the independence of each? Does he appear to see that the judiciary has a special duty to check legislative action? Does it appear that this power was generally acknowledged in Maryland before 1802?
 42. Does it appear from these selections that the course of reasoning was, historically, from the assertion that government is bound by principles of "natural justice"—the earlier contention—to the assertion that written constitutions embody fundamental law?

IV. The Sources¹

1. *The Law of Nations, etc.*, by Emmerich de Vattel.

(Fourth edition, London, 1811.) Book I, p. 34.

Here again a very important question presents itself. It essentially belongs to the society to make
5 laws both in relation to the manner in which it desires to be governed, and to the conduct of the citizens:—this is called the legislative power. The nation may intrust the exercise of it to the prince,
or to an assembly; or to that assembly and the
10 prince jointly; who have then a right to make new laws and to repeal old ones. It is asked whether their power extends to the fundamental laws,—whether they may change the constitution of the state? The principles we have laid down lead us
15 to decide with certainty, that the authority of these legislators does not extend so far, and that they ought to consider the fundamental laws as sacred, if the nation has not, in very express terms, given them power to change them. For the constitution
20 of the state ought to possess stability:² and since

¹ Italics are partially omitted in document 3, 6.

² *The Rights of the Colonies Asserted and Proved*, by James Otis, published in 1765, contained in addition to Otis's argument instructions of Boston to her representatives in the Legislature, and also

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that was first established by the nation, which afterwards intrusted certain persons with the legislative power, the fundamental laws are excepted from their commission. It is visible that the society only intended to make provision for having the state constantly furnished with laws suited to particular conjunctures, and, for that purpose, gave the legislature the power of abrogating the ancient civil and political laws that were not fundamental, and of making new ones: but nothing leads us to think that it meant to submit the constitution itself to their will. In short, it is from the constitution that those legislators derive their power: how then can they change it, without destroying the foundation of their own authority? By the fundamental laws of England, the two houses of parliament, in concert with the king, exercise the legislative power: but if the two houses should resolve to suppress themselves, and to invest the king with full and absolute authority, certainly the nation would not suffer it. And who would dare to assert that they would not have a right to oppose it? But if the parliament entered into a debate on making so considerable a change, and the whole nation was

25 "Substance of a Memorial presented to the House . . . and by them voted to be transmitted to Jasper Mauduit; Agent for this province." As a foot-note to the memorial, as published, is a quotation from Vattel, similar to the above as far as the words "to their will." The translation is different in wording: the sentence above reading,
30 "For the constitution of the state ought to be fixed."

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voluntarily silent upon it, this would be considered as an approbation of the act of its representatives.

2. *Works of John Adams*, II, p. 522. [A portion
5 of the argument by James Otis in the writs of assistance case, Massachusetts, 1761.]

As to Acts of Parliament. An act against the Constitution is void: an Act against natural equity is void; and if an act of Parliament should be
10 made, in the very words of this petition, it would be void. The executive Courts must pass such acts into disuse. 8 Rep. 118 from Viner. Reason of the common law to control an act of Parliament. Iron manufacture. Noble Lord's proposal, that we should send our horses to England
15 to be shod. . . .

[The following is taken from a learned discussion of the writs of assistance by Horace Gray, and published in *Quincy Reports*. This quotation is found
20 on p. 520.]

But Otis, while he recognized the jurisdiction of Parliament over the Colonies, denied that it was the final arbiter of the justice and constitutionality of its own acts; and relying upon words of the greatest English lawyers, and putting out of sight the
25 circumstances under which they were uttered, contended that the validity of statutes must be judged by the Courts of Justice; and thus foreshadowed the principle of American Constitutional

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Law, that it is the duty of the judiciary to declare unconstitutional statutes void.

His main reliance was the well known statement of Lord Coke in Dr. Bonham's case—"It appeareth
5 in our books, that in many cases the common law will control Acts of Parliament and adjudge them to be utterly void; for where an Act of Parliament is against common right and reason or repugnant or impossible to be performed, the common law will control it and adjudge it to be void." Otis seems also to
10 have had in mind the equally familiar dictum of Lord Hobart—"Even an Act of Parliament made against natural equity, as to make a man judge of his own case, is void in itself: for *jura naturæ sunt immutabilia*, and they are *leges legum*." Lord Holt is reported to have said, "What my Lord Coke says in Dr. Bonham's case in his 8 Rep. is far from any extravagancy, for it is a very reasonable and true saying, That if an Act of Parliament should ordain that
20 the same person should be party and judge, or what is the same thing, judge in his own cause, it would be a void Act of Parliament."

The law was laid down in the same way, on the authority of the above cases, in Bacon's Abridgment, first published in 1735; in Viner's Abridgment, published 1741-51, from which Otis quoted it; and in Comyn's Digest, published 1762-7, but written more than twenty years before. And there are older authorities to the same effect. So that at the time

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of Otis's agreement [argument] his position appeared to be supported by some of the highest authorities in the English law.

3. *Reports of cases argued and decided in the Court of Appeals of Virginia*, by Daniel Call. Vol. IV, p. 5. *Caton vs. Commonwealth*. [The case came before the Court by adjournment from the General Court. The facts are as stated below.]

10 John Caton, Joshua Hopkins and John Lamb were condemned for treason, by the general court, under the act of assembly concerning that offence, passed in 1776, which takes from the executive, the power of granting pardon in such cases. The house of
15 delegates by resolution of the 18th of June, 1782, granted them a pardon, and sent it to the senate for concurrence; which they refused. . . . In October 1782, the attorney general, moved in the general court, that execution of the judgment might be
20 awarded. The prisoners pleaded the pardon granted by the house of delegates. The attorney general denied the validity of the pardon, as the senate had not concurred in it: and the general court adjourned the case, for novelty and difficulty, to the court of
25 appeals.

[Statement of principle in opinion of Judge Wythe.]

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I have heard of an English chancellor who said,

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and it was nobly said, that it was his duty to protect the rights of the subject, against the encroachments of the crown; and that he would do it, 'at every hazard. But if it was his duty to protect a solitary
5 individual against the rapacity of the sovereign, surely, it is equally mine, to protect one branch of the legislature, and, consequently, the whole community, against the usurpations of the other: and, whenever the proper occasion occurs, I shall feel
10 the duty; and, fearlessly, perform it. Whenever traitors shall be fairly convicted, by the verdict of their peers, before the competent tribunal, if one branch of the legislature, without the concurrence of the other, shall attempt to rescue the offenders
15 from the sentence of the law, I shall not hesitate, sitting in this place, to say, to the general court, *Fiat justitia, ruat cælum*; and, to the usurping branch of the legislature, you attempt worse than a vain thing; for, although, you cannot succeed, you set
20 an example, which may convulse society to its centre. Nay, more, if the whole legislature, an event to be deprecated, should attempt to overleap the bounds, prescribed to them by the people, I, in administering the public justice of the country, will
25 meet the united powers, at my seat in this tribunal; and, pointing to the constitution, will say, to them, here is the limit of your authority; and, hither, shall you go, but no further.

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Chancellor Blair and the rest of the judges, were of the opinion, that the court had power to declare any resolution or act of the legislature, or of either
5 branch of it, to be unconstitutional and void. . . .

4. *American Criminal Trials*, by Peleg W. Chandler.
Vol. II. [Portions of an Argument of James
Varnum in the case of *Trevett vs. Weeden*
(1786).]

10 Pages 306-310.

The powers of legislation, in every possible instance, are derived from the people at large, are altogether fiduciary, and subordinate to the association by which they are formed. Were there no bounds
15 to limit and circumscribe the legislature; were they to be actuated by their own will, independent of the fundamental rules of the community, the government would be a government of men, and not of laws. And whenever the legislators depart from
20 their original engagements, and attempt to make laws derogatory to the general principles they were bound to support, they become tyrants. "For since it can never be supposed," as Mr. Locke well observes, "to be the will of the society, that the legis-
25 lative should have a power to destroy that which every one designs to secure, by entering into society, and for which the people submitted themselves to legislators of their own making, whenever the legislators endeavor to take away and destroy the

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property of the people, or to reduce them to slavery under arbitrary power, they put themselves into a state of war with the people." And again, "when the legislators act contrary to the end for which they were constituted, those who are guilty, are guilty of rebellion."

The powers of our legislature are so clearly defined in the charter, which is conclusive evidence of the compact of the people, as well as of the royal intention, that a recurrence to them will greatly assist us in the present question. Let us attend, therefore, to the following passage: "And that they (the general assembly) or the greatest part of them then present, whereof the governor or deputy governor, and six of the assistants, at least to be seven, shall have, and have hereby, given and granted unto them, full power and authority, from time to time, and at all times hereafter, to make, ordain, constitute, or repeal such laws, statutes, orders and ordinances, forms and ceremonies of government and magistracy, as to them shall seem meet, for the good and welfare of the said company, and for the government and ordering the lands and hereditaments hereinafter mentioned to be granted, and of the people that do, or at any time hereafter shall, inhabit or be within the same; so as such laws, ordinances and constitutions, so made, be not contrary and repugnant unto, but, as near as may be, agreeable to the laws of this our realm of England, con-

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sidering the nature and constitution of the place and people there."

This grant, which was obtained in consequence of an association of all the people for that purpose, expressly limits the legislative powers; and by invariable custom and usage they are still so confined, that they cannot make any laws repugnant to the general system of laws which governed the realm of England at the time of the grant. The revolution
10 has made no change in this respect, so as to abridge the people of the means of securing their lives, liberty and property; to preserve which they have ever considered the trial by jury the most effectual.

There are certain general principles that are
15 equally binding in all governments, more especially those which define the nature and extent of legislation. I do not recollect of having ever observed them so clearly and elegantly described, as in a treatise written by M. de Vattel, upon the laws of
20 nations and of nature. I shall introduce him. therefore, as he is translated, in his own words.

[Two long quotations, including "For the constitution of the state ought to be fixed."]

Have the citizens of this state ever entrusted
25 their legislators with the power of altering their constitution? If they have, when and where was the solemn meeting of all the people for that purpose? By what public instrument have they declared it,

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or in what part of their conduct have they betrayed such extravagance and folly? For what have they contended through a long, painful and bloody war but to secure inviolate, and transmit unsullied to
5 posterity, the inestimable privileges they received from their forefathers? Will they suffer the glorious price of all their toils to be wrested from them, and lost forever, by men of their own creating? They who have snatched their liberty from the jaws of
10 the British lion, amidst the thunders of contending nations, will they basely surrender it to the administration of a year? As soon may the great Michael kick the beam, and Lucifer riot in the spoils of angels!

15 Constitution! we have none; who dares to say that? None but a British emissary, or a traitor to his country. Are there any such amongst us? The language has been heard, and God forbid that they should continue! If we have not a constitution, by
20 what authority do our general assembly convene to make laws, and levy taxes? . . . When met, they make laws and levy taxes, and their constituents obey those laws, and pay their taxes. Consequently they meet, deliberate and enact, in virtue of a con-
25 stitution, which, if they attempt to destroy, or in any manner infringe, they violate the trust reposed in them, and so their acts are not to be considered as laws, or binding upon the people.

But as the legislative is the supreme power in

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government, who is to judge whether they have violated the constitutional rights of the people? I answer, their supremacy (consisting in the power of making laws, agreeably to their appointment) is derived from the constitution, is subordinate to it, and therefore, whenever they attempt to enslave the people, and carry their attempts into execution, the people themselves will judge, as the only resort in the last stages of oppression. But when they proceed no farther than merely to enact what they may call laws, and refer those to the judiciary courts for determination, then, (in discharge of the great trust reposed in them, and to prevent the horrors of a civil war, as in the present case,) the judges can, and we trust your honors will, decide upon them.

5. Martin's *Reports* (North Carolina), Vol. I. Due on the Dem. of Bayard and Wife *vs.* Singleton.] Pages 43-45.

■ The Court made a few observations on our constitution and system of government.

Ashe, J. observed, that at the time of our separation from Great Britain, we were thrown into a similar situation with a set of people ship-wrecked and cast on a maroon'd island—without laws, without magistrates, without government, or any legal authority—that being thus circumstanced, the people of this country, with a general union of sentiment, by their delegates, met in Congress, and

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formed that system or those fundamental principles comprised in the constitution, dividing the powers of government into separate and distinct branches, towit: the legislative, the judicial and executive, and assigning to each, several and distinct powers, and prescribing their limits and boundaries: this he said without disclosing a single sentiment upon the cause of the proceeding, or the law introduced in support of it.

10 *Curia advisare vult.*

At May term, 1787, Nash's motion was resumed, and produced a very lengthy debate from the bar.

Whereupon the Court recommended to the parties to consent to a fair decision of the property in question, by a jury according to the common law of the land, and pointed out to the defendant, the uncertainty, that would always attend his title, if this cause should be dismissed without a trial; as upon a repeal of the present act, (which would probably happen sooner or later) suit might be again commenced against him for the same property, at the time when evidences, which at present were easy to be had, might be wanting. But this recommendation was without effect.

25 Another mode was proposed for putting the matter in controversy on a more constitutional footing for a decision, than that of the motion under the aforesaid act. The Court then, after every reasonable endeavor had been used in vain for avoiding a

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disagreeable difference between the Legislature and the Judicial powers of the State, at length with much apparent reluctance, but with great deliberation and firmness, gave their opinion separately, but unanimously for overruling the aforementioned motion for the dismissal of the said suits.

In the course of which the Judges observed, that the obligation of their oaths, and the duty of their office required them in that situation, to give their opinion on that important and momentous subject; and notwithstanding the great reluctance they might feel against involving themselves in a dispute with the Legislature of the State, yet no object of concern or respect could come in competition or authorize them to dispense with the duty they owed the public, in consequence of the trust they were invested with under the solemnity of their oaths.

That they therefore were bound to declare that they considered, that whatever disabilities the persons under whom the plaintiffs were said to derive their titles, might justly have incurred, against their maintaining or prosecuting any suits in the Courts of this State; yet that such disabilities in their nature were merely personal, and not by any means capable of being transferred to the present plaintiffs, either by descent or purchase; and that these plaintiffs being citizens of one of the United States, are citizens of this State, by the confederation of all the States; which is to be taken as a part

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of the law of the land, unrepealable by any act of the General Assembly.

That by the constitution every citizen had undoubtedly a right to a decision of his property by a trial by jury. For that if the Legislature could take away this right, and require him to stand condemned in his property without a trial, it might with as much authority require his life to be taken away without a trial by jury, and that he should stand condemned to die, without the formality of any trial at all: that if the members of the General Assembly could do this, they might with equal authority, not only render themselves the Legislators of the State for life, without any further election of the people, [but] from thence transmit the dignity and authority of legislation down to their heirs male forever.

But that it was clear, that no act they could pass, could by any means repeal or alter the constitution, because if they could do this, they would at the same instant of time, destroy their own existence as a Legislature, and dissolve the government thereby established. Consequently the constitution (which the judicial power was bound to take notice of as much as of any other law whatever,) standing in full force as the fundamental law of the land, notwithstanding the act on which the present motion was grounded, the same act must of course, in that instance, stand as abrogated and without any effect.

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6. *Life and Correspondence of James Iredell*. Vol. II. [A letter "to the Public" written by Iredell and printed in a newspaper in Newbern, North Carolina, 1786.]

5 Pages 145-149.

I have not lived so short a time in the State, nor with so little interest in its concerns, as to forget the extreme anxiety with which all of us were agitated in forming the constitution, a constitution
10 which we considered as the fundamental basis of our government, unalterable, but by the same high power which established it, and therefore to be deliberated on with the greatest caution, because if it contained any evil principle, the government
15 formed under it must be annihilated before the evil could be corrected. It was, of course, to be considered how to impose restrictions on the legislature, that might still leave it free to all useful purposes, but at the same time guard against the abuse of un-
20 limited power, which was not to be trusted, without the most imminent danger, to any man or body of men on earth. We had not only been sickened and disgusted for years with the high and almost impious language from Great Britain, of the omnipotent power of the British Parliament, but had
25 severely smarted under its effects. We felt in all its rigor the mischiefs of an absolute and unbounded authority, claimed by so weak a creature as man, and should have been guilty of the basest breach of

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trust, as well as the grossest folly, if in the same moment when we spurned at the insolent despotism of Great Britain, we had established a despotic power among ourselves. Theories were nothing to us, opposed to our own severe experience. We were not ignorant of the theory of the necessity of the legislature being absolute in all cases, because it was the great ground of the British pretensions. But this was a mere speculative principle, which men at ease and leisure thought proper to assume. When we were at liberty to form a government as we thought best, without regard to that or any theoretical principle we did not approve of, we decisively gave our sentiments against it, being willing to run all the risks of a government to be conducted on the principles then laid as the basis of it. The instance was new in the annals of mankind. No people had ever before deliberately met for so great a purpose. Other governments have been established by chance, caprice, or mere brutal force. Ours, thank God, sprang from the deliberate voice of the people. We provided, or meant to provide (God grant our purpose may not be defeated), for the security of every individual, as well as a fluctuating majority of the people. We knew the value of liberty too well, to suffer it to depend on the capricious voice of popular favor, easily led astray by designing men, and courted for insidious purposes. Nor could we regard, without contempt, a theory which

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required a greater authority in man than (with reverence be it spoken) exists even in the Supreme Being. For His power is not altogether absolute—His infinite power is limited by His infinite
5 wisdom.

I have therefore no doubt, but that the power of the Assembly is limited and defined by the constitution. It is a creature of the constitution. (I hope this is an expression not prosecutable.) The people
10 have chosen to be governed under such and such principles. They have not chosen to be governed, or promised to submit upon any other; and the Assembly have no more right to obedience on other terms, than any different power on earth has a right
15 to govern us; for we have as much agreed to be governed by the Turkish Divan as by our own General Assembly, otherwise than on the express terms prescribed.

These are consequences that seem so natural, and
20 indeed so irresistible, that I do not observe they have been much contested. The great argument is, that though the Assembly have not a right to violate the constitution, yet if they in fact do so, the only remedy is, either by a humble petition that the law
25 may be repealed, or a universal resistance of the people. But that in the mean time, their act, whatever it is, is to be obeyed as a law; for the judicial power is not to presume to question the power of an act of Assembly.

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To these positions, not unconfidently urged, I answer:—

1. That the remedy by petition implies a supposition, that the electors hold their rights by the favor
5 of their representatives. The mere stating of this is surely sufficient to excite any man's indignation. What! if the Assembly say, we shall elect only once in two years, instead of electing annually, are we to petition them to repeal this law? to request that
10 they will be graciously pleased not to be our tyrants, but to allow us the benefit of the government we ourselves have chosen, and under which they alone derive all their authority?

But 2. The whole people may resist. A dreadful
15 expedient indeed. We well know how difficult it is to excite the resistance of a whole people, and what a calamitous contingency, at best, this is to be reduced to. But it is a sufficient answer, that nothing can be powerful enough to effect such a purpose
20 in a government like ours, but universal oppression. A thousand injuries may be suffered, and many hundreds ruined, before this can be brought about.

But this resource is evidently derived from the principle of unbounded legislative power, that I
25 have noticed before, and that our constitution reprobates. In England they are in this condition. In England, therefore, they are less free than we are. Every parliament in that country chosen for three

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years, continued itself for seven. This is an absolute fact, that happened long within the present century. Would this be a fit precedent for us? May our Assembly do so, because their Parliament did?
5 May our governor have a negative on the laws, because he has a faint image of monarchical power? As little, I trust, is the government of Great Britain to influence in other things, equally inconsistent with our condition, and equally proposterous as
10 these.

These two remedies then being rejected, it remains to be inquired whether the judicial power hath any authority to interfere in such a case. The duty of that power, I conceive, in all cases, is to
15 decide according to the laws of the State. It will not be denied, I suppose, that the constitution is a law of the State, as well as an act of Assembly, with this difference only, that it is the fundamental law, and unalterable by the legislature, which derives
20 all its powers from it. One act of Assembly may repeal another act of Assembly. For this reason, the latter act is to be obeyed, and not the former. An act of Assembly cannot repeal the constitution, or any part of it. For that reason, an act of Assem-
25 bly, inconsistent with the constitution, is void, and cannot be obeyed, without disobeying the superior law to which we were previously and irrevocably bound. The judges, therefore, must take care at their peril, that every act of Assembly, they presume

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to enforce is warranted by the constitution, since if it is not, they act without lawful authority. This is not a usurped or a discretionary power, but one inevitably resulting from the constitution of their
5 office, they being judges for the benefit of the whole people, not mere servants of the Assembly. And the danger, about which there is so much alarm, attending the exercise of this power is, in my opinion, the least that can be imagined to attend the exer-
10 cise of any important power whatever. . . . It may also be observed, that if the judges should be disposed to abuse their power, merely for the sake of the abuse, they have means enough of doing so, for every act of Assembly may occasionally come
15 under their judgment in one shape or other, and those acts may be willfully misconstrued, as well as the constitution.

But it is said, if the judges have this power, so have the county courts. I admit it. The county
20 courts, in the exercise of equal judicial power, must have equal authority. But every argument in respect to the judges (except their dependence for salary), and other obvious ones, occur in great force against this danger, besides the liberty of appeal,
25 which ultimately rests every thing, almost, with the superior courts. The objection, however, urged by some persons, that sheriffs and other ministerial officers must exercise their judgments too, does not apply. For if the power of judging rests with the

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courts, their decision is final as to the subject matter. Did ever a sheriff refuse to hang a man, because he thought he was unjustly convicted of murder?

[A letter from Richard Dobbs Spaight to James
5 Iredell, August 12, 1787.]

Pages 169, 170.

. . . The late determination of our judges at Newbern, must, in my opinion, produce the most serious reflections in the breast of every thinking man, and
10 of every well-wisher to his country. It cannot be denied, but that the Assembly have passed laws unjust in themselves, and militating in their principles against the Constitution, in more instances
15 than one, and in my opinion of a more alarming and destructive nature than the one which the judges, by their own authority, thought proper to set aside and declare void. The laws I allude to are the tender laws, and the laws for increasing the jurisdiction of the justices of the peace out of court: the latter
20 they have allowed to operate without censure or opposition; the former they have openly and avowedly supported, to the great disgrace of their characters. I do not pretend to vindicate the law, which has been the subject of controversy: it is
25 immaterial what law they have declared void; it is their usurpation of the authority to do it, that I complain of, as I do most positively deny that they have any such power nor can they find anything

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in the Constitution, either directly or impliedly, that will support them, or give them any color of right to exercise that authority. Besides, it would have been absurd, and contrary to all the practice of all
5 the world, had the Constitution vested such powers in them, as they would have operated as an absolute negative on the proceedings of the Legislature, which no judiciary ought ever to possess: and the State, instead of being governed by the representa-
10 tives in general Assembly, would be subject to the will of three individuals, who united in their own persons the legislative and judiciary powers, which no monarch in Europe enjoys, and which would be more despotic than the Roman Decemvirate and
15 equally as insufferable. If they possessed the power, what check or control would there be to their proceedings? or who is there to take the same liberty with them, that they have taken with the Legislature, and declare their opinions to be erroneous?
20 none that I know of. In consequence of which, whenever the judges should become corrupt, they might at pleasure set aside every law, however just or consistent with the Constitution, to answer their designs; and the persons and property of every
25 individual would be completely at their disposal. Many instances might be brought to show the absurdity and impropriety of such a power being lodged with the judges.

It must be acknowledged that our Constitution,

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unfortunately, has not provided a sufficient check, to prevent the intemperate and unjust proceedings of our Legislature, though such a check would be very beneficial, and, I think, absolutely necessary
5 to our well-being: the only one that I know of, is the annual election, which, by leaving out such members as have supported improper measures, will in some degree remedy, though it cannot prevent, such evils as may arise. I should not have
10 intruded this subject upon you, but as it must certainly undergo a public discussion, I wish to know what is the general opinion on that transaction. . . .

[Letter from Iredell to Richard D. Spaight, August 26, 1787.]

5 Pages 172-176.

In regard to the late decision at Newbern, I confess it has ever been my opinion, that an act inconsistent with the Constitution was void; and that the judges, consistently with their duties, could not
0 carry it into effect. The Constitution appears to me to be a fundamental law, limiting the powers of the Legislature, and with which every exercise of those powers must, necessarily, be compared. Without an express Constitution the powers of the Legis-
5 lature would undoubtedly have been absolute (as the Parliament in Great Britain is held to be), and any act passed, not inconsistent with natural justice (for that curb is avowed by the judges even in Eng-
land), would have been binding on the people. The

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experience of the evils which the American war fully disclosed, attending an absolute power in a legislative body, suggested the propriety of a real, original contract between the people and their future Government, such, perhaps, as there has been no instance of in the world but in America. Had not this been the case, bills of attainder, and other acts of party violence, might have ruined many worthy individuals here, as they have frequently done in England, where such things are much oftener the acts of a party than the result of a fair judicial enquiry. In a republican Government (as I conceive) individual liberty is a matter of the utmost moment, as, if there be no check upon the public passions, it is in the greatest danger. The majority having the rule in their own hands, may take care of themselves; but in what condition are the minority, if the power of the other is without limit? These considerations, I suppose, or similar ones, occasioned such express provisions for the personal liberty of each citizen, which the citizens, when they formed the Constitution, chose to reserve as an unalienated right, and not to leave at the mercy of any Assembly whatever. The restriction might be attended with inconvenience; but they chose to risk the inconvenience, for the sake of the advantage; and in every transaction we must act in the same manner: we must choose between evils of some sort or other: the imperfection of man can never keep entirely clear

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of all. The Constitution, therefore, being a fundamental law, and a law in writing of the solemn nature I have mentioned (which is the light in which it strikes me), the judicial power, in the exercise of
5 their authority, must take notice of it as the groundwork of that as well as of all other authority; and as no article of the Constitution can be repealed by a Legislature, which derives its whole power from it, it follows either that the fundamental unrepeat-
10 able law must be obeyed, by the rejection of an act unwarranted by and inconsistent with it, or you must obey an act founded on an authority not given by the people, and to which, therefore, the people owe no obedience. It is not that the judges
15 are appointed arbiters, and to determine as it were upon any application, whether the Assembly have or have not violated the Constitution; but when an act is necessarily brought in judgment before them, they must, unavoidably, determine one way
20 or another. . . . Suppose, therefore, the Assembly should pass an act, declaring that in future in all criminal trials the trial by jury should be abolished, and the court alone should determine. The Attorney-General indicts; the indictment is found; the
25 criminal is arraigned, and the Attorney-General requires his trial to come on. The criminal objects, alleging that by the Constitution all the citizens in such cases are entitled to a trial by jury; and that the Assembly have no right to alter any part of the

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Constitution; and that therefore the act appointing the trial by the court is void. Must not the court determine some way or other, whether the man shall be tried or not? Must not they say whether
5 they will obey the Constitution or an act inconsistent with it? So—suppose a still stronger case, that the Assembly should repeal the law naming the day of election, (for that is not named in the Constitution,) and adjourn to a day beyond it, and pass acts, and
10 these acts be attempted to be enforced in the courts. Must not the court decide whether they will obey such acts or no? And would it be approved of (except by a majority of the de facto Assembly) if they should say, “We cannot presume to declare
15 that the Assembly, who were chosen for one year, have exceeded their authority by acting after the year expired.” It really appears to me, the exercise of the power is unavoidable, the Constitution not being a mere imaginary thing, about which ten
20 thousand different opinions may be formed, but a written document to which all may have recourse, and to which, therefore, the judges cannot wilfully blind themselves. This seems also to have been the idea of some of the early Assemblies under the Con-
25 stitution, since, in the oath of allegiance are these expressions: “I, A.B. do sincerely promise and swear, that I will be faithful and bear true allegiance to the State of North Carolina, and to the powers and authorities which are or may be established for the

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government thereof, not inconsistent with the Constitution." (Act of Nov. 1777.)

7. *Records of the Federal Convention*, Vols. I, II, III.

[From the Notes of James Madison of proceedings on June 4, 1787.]

Vol. I, p. 97.

(First) Clause (of Proposition 8th) relating to a *Council of Revision* taken into con-consideration.¹

Mr. Gerry doubts whether the Judiciary ought to form a part of it, as they will have a sufficient check agst. encroachments on their own department by their exposition of the laws, which involved a power of deciding on their Constitutionality. In some States the Judges had (actually) set aside laws as being agst. the Constitution. This was done too with general approbation. It was quite foreign from the nature of ye. office to make them judges of the policy of public measures.

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[From the Notes of William Pierce of proceedings on June 4th.]

Vol. I, p. 109.

. . . It was proposed that the Judicial should be joined with the Executive to revise the Laws.

¹ The subject under consideration was a portion of the eighth resolution of the Virginia Plan presented to the Convention, May 29th. It proposed "that the Executive and a convenient number of the National Judiciary, ought to compose a council of revision with authority to examine every act of the National Legislature before it shall operate. . . ."

Source Problems in United States History

Mr. King was of opinion that the Judicial ought not to join in the negative of a Law, because the Judges will have the expounding of those Laws when they come before them; and they will no
5 doubt stop the operation of such as shall appear repugnant to the constitution.

[From the Notes of James Madison of proceedings on July 21st.]

Vol. II, p. 73.

10 . . . Mr. Wilson moved as an amendment to Resoln: 10. that the (supreme) Natl Judiciary should be associated with the Executive in the Revisionary power. This proposition had been before made, and failed; but he was so confirmed by reflection
15 in the opinion of its utility, that he thought it incumbent on him to make another effort: The Judiciary ought to have an opportunity of remonstrating agst projected encroachments on the people as well as on themselves. It had been said that the
20 Judges, as expositors of the Laws would have an opportunity of defending their constitutional rights. There was weight in this observation; but this power of the Judges did not go far enough. Laws may be unjust, may be unwise, may be dangerous,
25 may be destructive; and yet not be so unconstitutional as to justify the Judges in refusing to give

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them effect. Let them have a share in the Revisionary power, and they will have an opportunity of taking notice of these characters of a law, and of counteracting, by the weight of their opinions the
5 improper views of the Legislature.—Mr. (Madison)
2ded. the motion.

Pages, 76, 77.

Mr. L. Martin. considered the association of the Judges with the Executive as a dangerous innovation; as well as one which, could not produce the particular advantage expected from it. A knowledge of mankind, and of Legislative affairs cannot be presumed to belong in a higher deger [sic] degree to the Judges than to the Legislature. And as to the
15 Constitutionality of laws, that point will come before the Judges in their proper official character. In this character they have a negative on the laws. Join them with the Executive in the Revision and they will have a double negative. It is necessary
20 that the Supreme Judiciary should have the confidence of the people. This will soon be lost, if they are employed in the task of remonstrating agst. popular measures of the Legislature. Besides in what mode & proportion are they to vote in the
25 Council of Revision?

[Mr. Madison argued strongly in favor of associating the judges with the executive in a revisionary check on the legislature.]

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Page 78.

Col. Mason Observed that the defence of the Executive was not the sole object of the Revisionary power. He expected even greater advantages from it. Notwithstanding the precautions taken in the Constitution of the Legislature, it would so much resemble that of the individual States, that it must be expected frequently to pass unjust and pernicious laws. This restraining power was therefore essentially necessary. It would have the effect not only of hindering the final passage of such laws; but would discourage demagogues from attempting to get them passed. It had been said (by Mr. L. Martin) that if the Judges were joined in this check on the laws, they would have a double negative, since in their expository capacity of Judges they would have one negative. He would reply that in this capacity they could impede in one case only, the operation of laws. They could declare an unconstitutional law void. But with regard to every law however unjust oppressive or pernicious, which did not come plainly under this description, they would be under the necessity as Judges to give it a free course. He wished the further use to be made of the Judges, of giving aid in preventing every improper law. Their aid will be the more valuable as they are in the habit and practice of considering laws in their true principles, and in all their consequences.

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Page 80.

Mr. Rutledge thought the Judges of all men the most unfit to be concerned in the revisionary Council. The Judges ought never to give their opinion
5 on a law till it comes before them. . . .

[The motion to associate the judges in the revision of laws was lost. Ayes—3; noes—4; divided—2.]

[James Madison discussing the method of adopting the Constitution. From his Notes of July 23d.]

10 Page 93.

He considered the difference between a system founded on the Legislatures only, and one founded on the people, to be the true difference between a league or treaty, and a *Constitution*. . . .

15 1. A law violating a treaty ratified by a pre-existing law, might be respected by the Judges as a law, though an unwise or perfidious one. A law violating a constitution established by the people themselves, would be considered by the Judges as
20 null & void.

[From the Notes of James Madison of proceedings on August 15th.]

Pages 298, 299.

Mr. Ma[dison] moved that all acts before they
25 become laws should be submitted both to the Executive and Supreme Judiciary Departments, that if either of these should object $\frac{2}{3}$ of each House, if both should object, $\frac{3}{4}$ of each House, should be

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necessary to overrule the objections and give to the acts the force of law. . . .

Mr. Wilson seconds the motion.

Mr. Pinkney opposed the interference of the
5 Judges in the Legislative business: it will involve them in parties, and give a previous tincture to their opinions.

Mr. Mercer heartily approved the motion. It is an axiom that the Judiciary ought to be separate
10 from the Legislative: but equally so that it ought to be independent of that department. The true policy of the axiom is that legislative usurpation and oppression may be obviated. He disapproved of the Doctrine that the Judges as expositors of the
15 Constitution should have authority to declare a law void. He thought laws ought to be well and cautiously made, and then to be uncontrollable. . . .

[Motion of Madison lost. Ayes—3; noes—8.]

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Mr. Dickenson was strongly impressed with the
20 remark of Mr. Mercer as to the power of the Judges to set aside the law. He thought no such power ought to exist. He was at the same time at a loss what expedient to substitute. The Justiciary of Aragon he observed became by degrees the law-
25 giver.

Mr. Govr. Morris, suggested the expedient of an absolute negative in the Executive. He could not

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agree that the Judiciary which was part of the Executive, should be bound to say that a direct violation of the Constitution was law. A controul over the legislature might have its inconveniences. But
5 view the danger on the other side. The most virtuous citizens will often as members of a legislative body concur in measures which afterwards in their private capacity they will be ashamed of. Encroachments of the popular branch of the Government
10 ought to be guarded agst. The Ephori at Sparta became in the end absolute. The Report of the Council of Censors in Pennsylvia points out the many invasions of the legislative department on the Executive numerous as the latter is, within the
15 short term of seven years, and in a State where a strong party is opposed to the Constitution, and watching every occasion of turning the public resentments agst. it.

[Portions of a speech by Oliver Ellsworth in the
20 Connecticut Ratifying Convention, January 7, 1788.]

Vol. III, p. 240.

This Constitution defines the extent of the powers of the general government. If the general legislature should at any time overleap their limits, the
25 judicial department is a constitutional check. If the United States go beyond their powers, if they make a law which the Constitution does not authorize, it is void; and the judicial power, the

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national judges, who to secure their impartiality, are to be made independent, will declare it to be void. On the other hand, if the states go beyond their limits, if they make a law which is a usurpation upon the federal government the law is void; and upright, independent judges will declare it to be so.

8. *The Federalist*, P. L. Ford, editor. [Alexander Hamilton, in No. LXXVII.

10 Page 520.

. . . The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited Constitution I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no *ex post facto* laws, and the like. Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.

Some perplexity respecting the rights of the courts to pronounce legislative acts void, because contrary to the Constitution, has arisen from an imagination that the doctrine would imply a superiority of the judiciary to the legislative power. It is urged that the authority which can declare

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the acts of another void must necessarily be superior to the one whose acts may be declared void. As this doctrine is of great importance in all the American constitutions, a brief discussion of the ground
5 on which it rests cannot be unacceptable.

There is no position which depends on clearer principles than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative
10 act, therefore, contrary to the Constitution, can be valid. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves;
15 that men acting by virtue of powers may do not only what their powers do not authorize, but what they forbid.

If it be said that the legislative body are themselves the constitutional judges of their own powers, and that the construction they put upon them is
20 conclusive upon the other departments, it may be answered that this cannot be the natural presumption, where it is not to be collected from any particular provisions in the Constitution. It is not other-
25 wise to be supposed that the Constitution could intend to enable the representatives of the people to substitute their *will* to that of their constituents. It is far more rational to suppose that the courts were designed to be an intermediate body between

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the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the laws is the proper and peculiar province of the courts.

5 A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be

10 an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute; the intention of the people to the inten-

15 tion of their agents.

Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the

20 legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than

25 by those which are not fundamental.

This exercise of judicial discretion, in determining between two contradictory laws, is exemplified in a familiar instance. It not uncommonly happens that there are two statutes existing at one time,

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clashing in whole or in part with each other, and neither of them containing any repealing clause or expression. In such a case, it is the province of the courts to liquidate and fix their meaning and operation. So far as they can by any fair construction be reconciled to each other, reason and law conspire to dictate that this should be done; where this is impracticable, it becomes a matter of necessity to give effect to one, in exclusion of the other. The rule which has obtained in the courts for determining their relative validity is that the last in order of time shall be preferred to the first. But this is a mere rule of construction, not derived from any positive law, but from the nature and reason of the thing. It is a rule not enjoined upon the courts by legislative provision, but adopted by themselves, as consonant to truth and propriety, for the direction of their conduct as interpreters of the law. They thought it reasonable that, between the interfering acts of an *equal* authority, that which was the last indication of its will should have the preference.

But in regard to the interfering acts of a superior and subordinate authority, of an original and derivative power, the nature and reason of the thing indicate the converse of that rule as proper to be followed. They teach us that the prior act of a superior ought to be preferred to the subsequent act of an inferior and subordinate authority; and that accordingly, whenever a particular statute contra-

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venes the Constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former.

It can be of no weight to say that the courts, on the pretense of a repugnancy, may substitute their own pleasure to the constitutional intentions of the legislature. This might as well happen in the case of two contradictory statutes; or it might as well happen in every adjudication upon any single statute. The courts must declare the sense of the law; and if they should be disposed to exercise will instead of judgment, the consequence would equally be the substitution of their pleasure to that of the legislative body. The observation, if it prove any-
15 thing, would prove that there ought to be no judges distinct from that body.

9. *The Works of James Wilson*, edited by James Dewitt Andrews. Vol. I.

Pages 415, 416.

20 "I know of no power," says Sir William Blackstone, "which can control the parliament." His meaning is obviously, that he knew no *human* power sufficient for this purpose. But the parliament may, unquestionably, be controlled by natural or revealed
25 law, proceeding from *divine* authority. Is not this authority superior to any thing that can be enacted by parliament? Is not this superior authority binding upon the courts of justice? When repugnant commands are delivered by two different authori-

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ties, one inferior and the other superior; which must be obeyed? When the courts of justice obey the superior authority, it cannot be said with propriety that they control the inferior one; they only
8 declare, as it is their duty to declare, that this inferior one is controlled by the other, which is superior. They do not repeal the act of parliament: they pronounce it void, because contrary to an overruling law. From that overruling law, they receive
10 the authority to pronounce such a sentence. In this derivative view, their sentence is of obligation paramount to the act of the inferior legislative power.

In the United States, the legislative authority is subjected to another control, beside that arising
15 from natural and revealed law; it is subjected to the control arising from the constitution. From the constitution, the legislative department, as well as every other part of government, derives its power; by the constitution, the legislative, as well as every
20 other department, must be directed; of the constitution, no alteration by the legislature can be made or authorized. In our system of jurisprudence these positions appear to be incontrovertible. The constitution is the supreme law of the land: to that
25 supreme law every other power must be inferior and subordinate.

Page 417.

This is the necessary result of the distribution of

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power, made, by the constitution, between the legislative and the judicial departments. The same constitution is the supreme law to both. If that constitution be infringed by one, it is no reason that
5 the infringement should be abetted, though it is a strong reason that it should be discountenanced and declared void by the other.

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This regulation is far from throwing any dis-
10 paragement upon the legislative authority of the United States. It does not confer upon the judicial department a power superior, in its general nature, to that of the legislature; but it confers upon it, in particular instances, and for particular purposes,
15 the power of declaring and enforcing the superior power of the constitution—the supreme law of the land.

10. Dallas, *Reports of Cases . . . in the several courts of the United States*. Vol. II (304). [Justice Paterson's charge to the jury in the
20 case of *Van Horne's Lessee vs. Dorrance*, 1795.]

Pages 308, 309.

What is a constitution? It is the form of govern-
25 ment, delineated by the mighty hand of the people, in which certain first principles of fundamental laws are established. The constitution is certain and fixed; it contains the permanent will of the people,

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and is the supreme law of the land; it is paramount to the power of the legislature, and can be revoked or altered only by the authority that made it. The life-giving principle and the death-doing stroke must
5 proceed from the same hand. What are legislatures? Creatures of the constitution; they owe their existence to the constitution: they derive their powers from the constitution: it is their commission; and therefore, all their acts must be conformable to it,
10 or else they will be void. The constitution is the work or will of the people themselves, in their original sovereign and unlimited capacity. Law is the work or will of the legislature, in their derivative and subordinate capacity. The one is the work of
15 the creator, and the other of the creature. The constitution fixes limits to the exercise of legislative authority, and prescribes the orbit within which it must move.

I take it to be a clear position; that if the legis-
20 lative act oppugns a constitutional principle, the former must give way, and be rejected on the score of repugnance. I hold it to be a position equally clear and sound, that, in such case, it will be the duty of the court to adhere to the constitution, and
25 to declare the act null and void. The constitution is the basis of legislative authority; it lies at the foundation of all law, and is a rule and commission by which both legislators and judges are to proceed,

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It is an important principle, which, in the discussion of questions of the present kind, ought never to be lost sight of, that the judiciary in this country is not a subordinate, but co-ordinate, branch of the
5 government.

11. Harris and Johnson, *Reports* (Maryland). Vol.

I. [Chief Justice Chase's opinion in the case of *Whittington vs. Polk* (1802).]

Pages 241-242.

10 Chase, Ch. J.—In the discussion of this case the following points were raised and contended for by the counsel of the plaintiff.

1st. That an act of Assembly repugnant to the constitution is void.

15 2nd. That the court have a right to determine an act of Assembly void, which is repugnant to the constitution.

[3rd and 4th points are omitted here as unimportant.]

20 The *two first points* were conceded by the counsel for the defendant; indeed, they have not been controverted in any of the cases which have been brought before this court.

Pages 244, 245.

25 The three great powers or departments of government are independent of each other, and the legislature, as such, can claim no superiority or pre-eminence over the other two. The legislature are the trustees of the people, and, as such, can only move

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within those lines which the constitution has defined as the boundaries of their authority, and if they should incautiously, or unadvisedly transcend those limits, the constitution has placed the judiciary
5 as the barrier or safeguard to resist the oppression, and redress the injuries which might accrue from such inadvertent, or unintentional infringements of the constitution.

PROBLEM IV

IV.—Religious Toleration and Freedom in
Virginia, 1689-1786

Religious Toleration and Freedom in Virginia, 1689-1786

I. THE HISTORICAL SETTING OF THE PROBLEM

THE history of the struggle for religious toleration and liberty in America is a part of that larger struggle for democracy which included not only political, but also economic, social and religious phases. But at the time the American colonies were being settled the democratic movement had made but little progress. So far as religion was concerned the general practice was a church establishment. The privileged classes, then in power, feared that a grant of religious toleration or freedom would weaken their power. While religious toleration had made progress, religious liberty was almost unknown at the opening of the seventeenth century.

It is important to distinguish between these two principles. Religious toleration presupposed an established church or its equivalent. Those dissenting from the beliefs of this church might be granted a certain measure of toleration, not as a right but as a favor; for example, freedom to hold their own religious views and the privilege of choosing their own ministers. But this concession did not mean that the dissenters were free from the obligation to help support the established church, nor did it give them many other privileges which at this date were under the control of the church, or that of the state in

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its ecclesiastical aspects. For example, even when there was a grant of some form of toleration, dissenters were usually compelled to submit to various tests or oaths, by attesting their orthodoxy and by subscribing to creeds and catechisms of the established order, or by promising their loyalty to the king or government. Frequently there were various religious requirements involving membership in the established church, or a profession of Christianity, in order to gain citizenship, the right to vote, the right to settle in a given colony or become a naturalized citizen, hold office, act as a witness in court, teach school, etc. A legal marriage could perhaps only be performed by a clergyman of the established order. Dissenters were subjected to tithes or taxes for the support of the established church, even if they were at the same time supporting their own ministers. If they had no regular service of their own they had to attend the services of the established church.

Complete religious liberty, on the other hand, meant absolute freedom to believe any religious doctrine or creed, or even none at all. It meant the absolute separation of church and state, and a denial of the theory that the civil authorities had any power whatever to regulate one's religious views, or to make his civil rights depend on such views. It meant freedom to organize and maintain churches at any place, freedom to choose ministers, and, in short, freedom from all restrictions whatever which might be based on religious beliefs or their entire absence.

The history of religious toleration in Virginia divides itself naturally into three periods. First from the charter of 1606 to 1689, the passage of the English toleration act; second from 1689 to 1755, the period which, for the most part, concerns the struggle of the Presbyterians for toleration; third from 1755 to 1776. From 1755 to 1768 the laws on this question were not enforced, due to the con-

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ditions growing out of the French and Indian War. The years 1768 to 1776 mark the period of the reopening of the struggle, largely confined to the efforts of the authorities to enforce the laws against the Baptists, and the endeavor to prevent the growth of this denomination. Virginia was founded and settled without thought of religious toleration. On the contrary, the Church of England was instituted at once, and during the seventeenth, and the most of the eighteenth century, was believed in by a majority of the inhabitants. Instructions to the early governors required them to maintain the worship of the established church. The early assemblies, from 1619 to 1664, passed acts providing for church services according to the laws and orders of the Church of England and for church attendance; for requiring ministers to conform to its canons; for their support and for glebes; for ordering non-conformists out of the colony; for the creation of vestries limited to twelve persons, with power to levy tithes for the ministers' salaries; for vestrymen to take the oath of supremacy and to subscribe to the doctrines and discipline of the Church of England. Vestries were ultimately made close corporations and irresponsible, and when once elected by the people of the parish they could fill their own vacancies. The vestries were given the care of the poor and fixed the amount of the assessment of each person for this purpose, as well as for general church purposes. From 1685 Virginia was made a part of the diocese of London under the control of the Bishop of London, who from 1691 appointed a commissary or deputy to represent him in the colony, but with limited powers.

There were dissenters in Virginia from an early date, Puritans and Quakers, and later German sects and Huguenots. There was more or less persecution for violation of the religious acts, but these sects did not have

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numerous adherents, nor were they particularly aggressive or dangerous to the supremacy of the established church, so that they offered no serious problem. The English toleration act of 1689, together with the Virginia act of 1699, provided for limited toleration to qualified dissenters, under a system of allowing them to be absent from the services of the established church, without penalty, if they attended their own meetings once in two months, and a requirement for the licensing of their duly qualified ministers for preaching.

The problem of the dissenters became more serious with the rise of the Presbyterian denomination. There were comparatively few in Virginia up to 1730, but after this date they increased rapidly. From 1730 to the revolution was the period of the great migration of Scotch-Irish Presbyterians to the colonies, particularly to Pennsylvania, and from thence south to the back country regions of the southern colonies. In Virginia there were numerous congregations in the Shenandoah Valley and the middle counties of Virginia before 1750. The demand for all the toleration allowed dissenters by the English and Virginia toleration acts was stimulated by the religious movement (1740) known as the Great Awakening. This was a great religious revival which spread rapidly among the dissenting sects under the preaching of such men as Jonathan Edwards, George Whitefield, and Samuel Davies. With the growth of the missionary spirit numerous itinerant or traveling preachers were sent to Virginia by the northern presbyteries, to minister to the people living in the sparsely settled regions of middle and western Virginia.

Several factors which contributed to the rapid growth of the demand for toleration in Virginia, and the development of the struggle between the established church and the dissenters, must now be mentioned. In the first

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place the general condition of this church was such that it did not meet the needs of the new-comers, the majority of whom were already of a different faith, when they arrived in Virginia. Most of the clergy were men of inferior ability and were, moreover, generally accused of even being lacking in those spiritual and moral qualifications expected of this class. The church service and the preaching smacked of formalism, and in general neither the adherents of this church, nor the clergy for the most part, could be called enthusiastic zealous workers, imbued with fervent, active religious beliefs. The church had taken on an aristocratic aspect, from the nature of its government, its subordination to the state and to political control, and the fact that its influential members were also members of that planter aristocracy which had developed with the slavery system. The clergy and parishioners thoroughly believed in the union of church and state and were greatly disturbed because of the rise of the dissenters and their demands. Moreover, the clergy were not only not moved by the Great Awakening, but attempted to hinder the progress of this movement. They were unable to make an effective appeal to the masses of the people even if they had been so inclined.

On the other hand, the effect of the great revival among the dissenters had been to emphasize the emotional, direct, fervent appeal and to welcome all classes to their churches. The preachers were men of intense, earnest natures, who preached the doctrine of direct personal communion with God and demanded a real new birth and change in the spiritual nature of converts. They used the revival, with all its accompanying phenomena, to awaken the religious emotions of the masses. Some of them violently criticized the clergy of the established church both as to their moral and spiritual character and their lack of zeal in the work. The early dissenting

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churches were organized on democratic principles. The classes of people reached were the new-comers, who settled in the back country regions under frontier conditions. The spirit of democracy, political, economic, social and religious, which the frontier always engenders, was rising, and with it, social and economic as well as religious dissatisfaction.

One of the effects of the Great Awakening had been to bring about a cleavage in the Presbyterian as well as the Baptist church; the former divided into Old Side or Old Lights and New Side or New Lights; the latter into Regular and Separate Baptists. The reaction from the conservatism, rationalism and formalism, which had affected all the churches before the revival, had resulted in the pendulum swinging to the opposite extreme among some of the clergy. They were inclined to great extravagance in action and speech, and used methods in their preaching not approved by the more conservative clergymen. The New Side Presbyterian clergymen, members of the Synod of New York, gave trouble because they insisted on an interpretation of the toleration acts and a system of licensing which would allow them to itinerate, or preach in any number of different places, have any number of congregations under their care and hold their services in the older counties where the Church of England was already well established, as well as in the more distant newly settled countries where there were very few adherents of the Church of England.

Governor Gooch was willing to grant toleration, under the acts mentioned, according to his interpretation of them. He wished the power of granting licenses to be with the General Court of the colony, consisting of the Governor and his Council, rather than with the county courts as demanded by the New Side Presbyterian clergymen. He wished to restrict the right of a clergyman to

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preach, by granting a license to preach only to one or a few congregations located entirely in one county, because he feared that "itinerating" would result in the rapid growth of the Presbyterians, the stirring up of discord and schism, and the decay of the established church. The Old Side Presbyterians, or members of the Synod of Philadelphia, gave little trouble because of their willingness to apply for licenses and to confine themselves to the congregations and places specified. But the New Side clergymen often preached without any license, as did the Rev. Mr. Roan, and even Samuel Davies did not confine himself strictly to the places or congregations mentioned in his license.

Religious toleration was in effect granted the Presbyterians after 1755 because of the influence of the French and Indian War. There was great need of protection for the frontiers, and fear as to the religious results if the French were victorious. The dissenters were the main reliance for warding off the Indian attacks. Accordingly the laws ceased to be enforced against the Presbyterians after this date. The breaking out of the struggle again from 1768 to the revolution, largely confined to the Baptists, was due to the extremely radical character of the Separate Baptist preachers, and their activity in itinerating, preaching without a license and their bitter denunciation of the established church. They were so zealous and successful in adding to their numbers that the church authorities were alarmed, considered them as disturbers of the peace and made a vigorous attempt to check the movement by having the acts enforced. With the opening of the revolution the struggle for toleration developed into a struggle for religious liberty.

The spirit of the revolution demanded the enforcement of those well-known principles, that governments derived

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their powers from the consent of the governed; that individuals should receive benefits in proportion to taxes paid, and should be represented in any body levying taxes; that the freedom of the individual depended on those unalienable rights—the security of life, liberty and property, and freedom to think and act as one pleased, provided he did not interfere with the rights of his fellow-man. The demands for political freedom and equality naturally aroused the sentiment for religious freedom and equality. But the established church continued to exercise its authority to levy taxes on dissenters for the support of a church they neither believed in nor attended. The close relation between political and religious liberalism is apparent in the documents given. They show that religious liberty came to be looked upon as a natural, inherent and unalienable right; that it was defended because otherwise the principles of taxation without representation, government without the consent of the governed, taxation without benefits received, and the principles of equality, justice and reason would all be violated.

The struggle for religious liberty is marked by two periods. The first extends from 1776 to 1779, including the religious liberty clause in the Declaration of Rights and the Act of December 5, 1776, the latter repealing the laws which interfered with a person's religious opinions, or required attendance at the services of the Church of England, or prohibited other modes of worship than the Episcopal. But the question was left open, and debated in each session of the assembly in the period 1776 to 1779, as to whether a general assessment should not be established by law to compel every one to support the minister of his choice, or whether the support of religion should be left entirely to voluntary contribution. In 1779 the latter principle was affirmed and the establishment of the

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Anglican Church abolished. The second period, from 1779 to 1786, is marked mainly by an attempt to sell the glebes, or lands which had been granted for the partial support of the clergy, to repeal the marriage laws, giving the Episcopal clergy the exclusive right to perform a legal marriage, to withdraw from the vestries the right to levy taxes for the support of the poor and in fact to dissolve completely the vestries and bring about the separation of church and state. Although the act of 1779 had decided against the principle of a general assessment for the support of religion, yet those in favor of this plan did not give up the struggle and made another vigorous attempt, in 1784-85, to pass a bill involving this principle. Thus there existed in Virginia up to this date only a modified form of religious liberty, and the vital question of a complete separation of church and state was still unanswered.

Indeed, the liberal principles set forth in the Bill of Rights and the act of 1776 were met by a conservative reaction in the period of 1777 to 1779 and again in the period 1783 to 1785. In fact, throughout this period the majorities in the House of Delegates were usually in favor of some form of assessment, while the majority of the people were against it. Some of those who had been relieved of the payment of taxes for the support of the state church were not adverse to having a general assessment for the support of religion based on the principle that each person should declare which religious denomination he favored and then be compelled to aid in support of this denomination. Patrick Henry and Richard Henry Lee were both in favor of this plan in 1784, largely because one of the effects of the war had been to bring about a great decline in morals and religion, and this method seemed to many to be the best way to check a further decline. The principle of a general assessment was op-

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posed by Jefferson and Madison from the first. In general the bill was favored by eastern and opposed by the extreme western counties. By religious denominations, some of the Presbyterians at first appear to have been willing to accept a qualified form of assessment, on the ground that the assembly was sure to pass some such act, but the main body of the church was undoubtedly opposed to it. The Baptists were consistently and unqualifiedly opposed. Madison stated in a letter to Monroe, April 12, 1785, "The laity of the other sects [than the Episcopal] are generally unanimously on the other side."

The issue involved was in reality the general issue which is so prominent in this period, that of the struggle between the conservative and liberal forces of society. The reaction from the extreme liberal and even radical views engendered by the revolution was due to the alarm of many of the political leaders, even some of those who had been classed as radical previously, because of the tendency of the times—the decentralizing forces, and the apparent breakdown of the régime of law, order, and the older settled ways of society. Democracy was not giving a good account of itself and needed curbing, in their opinion. The attempt of the more conservative leaders to check the liberal movement in religion and set up a modified form of church establishment, was due in part to a desire to preserve their own power and influence and to help them in establishing a more conservative government. In part it was due to a desire to check the work of the democratic churches, particularly the Presbyterians and Baptists, and the influence of their adherents in politics and society. It is to be noted that practically no protests against the principle of a general assessment were made to the legislature from the eastern counties, while very vigorous protests came from the ex-

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treme western or frontier counties, the home of democracy. These petitions combine the arguments for religious and political liberty and indicate the feeling of the democratic West toward the conservative East—an illustration of sectionalism in Virginia.

On December 2, 1784, the bill entitled a bill for "establishing a provision for teachers of the Christian religion" was introduced. This was in effect a general assessment bill under a new name, for it provided for a tax upon all taxable property for the support of ministers, and each taxpayer was to designate the church which should receive this tax. The bill was printed and published in handbills and circulated with the request that the people give their opinion respecting its adoption at the next session of the Assembly. Between the ending of the session and the meeting of the Assembly in October, 1785, Madison drew up and circulated his famous Memorial and Remonstrance against the bill, in which he stated the relations that should exist between the state and religion. This exerted a great influence against assessment. The Presbyterians and Baptists also drew up protests against it, while the Episcopal church favored the bill. The Assembly met October 25, 1785, and was flooded with petitions mostly in opposition to assessment, and the bill died in committee. On December 14th the "bill for establishing religious freedom" originally prepared by Jefferson was brought up and passed the third reading December 17th, and finally passed both Houses with amendments January 16, 1786. There still remained the work of repealing a bill which had incorporated the Episcopal church, the abolition of all the vestries, and the sale of the glebes, all of which was accomplished by 1803. The act of 1786, however, really ended the struggle.

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II. INTRODUCTIONS TO THE SOURCES

1. *The Statutes at Large, from Magna Charter to . . . 1761*, edited by Danby Pickering, Vols. IX, XII. (Cambridge, 1764.)

2. *The Statutes at Large, being a Collection of all the Laws of Virginia, 1619-1792*, edited by William Walter Hening, Vols. III, XII. (Philadelphia and Richmond, 1823.)

The English Statutes at Large and those of Virginia need no special comment.

3. *Records of the Presbyterian Church in the United States of America, etc.* (Philadelphia, 1904.)

These are the official records of the meetings of the synods of the church and contain numerous documents, including letters, etc. The charge of Governor Gooch to the grand jury is taken from the *American Weekly Mercury* of August, 1745. It is also found, with slight variations, in Burk, *History of Virginia*, Vol. III, pp. 119-121, taken apparently from the *Virginia Gazette* of April 25, 1745. Governor Gooch was a stickler for the observance of the laws and was besides a strict churchman.

4. *The State of Religion among the Protestant Dissenters in Virginia. In a Letter to the Rev. Mr. Joseph Bellamy of Bethlem, in New England. From the Reverend Mr. Samuel Davies. . . .* (Boston, 1751.)

The extract given is from an account of Samuel Morris, an early convert, of whom Davies says, "Not understanding the calumnies flung upon it [his name] by many a person of a forward, sociable spirit," Mr. Davies requested him to write a narrative recounting the rise and progress of the Presbyterians in Virginia. Mr. Davies says in his letter to Mr. Bellamy that "this, together with the substance of what he and others have told me, I shall present to you without any material alterations,

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and personate him, tho' I shall not exactly use his words." This extract may also be found in *The Great Awakening*, by Joseph Tracy, pp. 381-382.

5. *Sketches of Virginia, Historical and Biographical*, by William Henry Foote. (Philadelphia, 1850.)

Foote prints numerous letters of Samuel Davies and other Presbyterian clergymen, as well as memorials of the conventions of the Presbyterian church.

6. *Historical Collections relating to the American Colonial Church*, edited by William Stevens Perry, Vol. I—Virginia. (Hartford, 1870.)

Perry prints a large number of letters which passed between the Bishop of London, his representative in Virginia, and other original documents bearing on the history of the church in Virginia. The letters given illustrate the fear of the Bishop and his deputy that the Church of England would decline unless some means could be found to check the growth of the Presbyterians.

7. *Journals of the House of Burgesses of Virginia*, edited by John Pendleton Kennedy, volumes for 1766-1769, 1770-1772, 1773-1776. (Richmond, 1905, 1906.)

8. *Life and Correspondence of George Mason*, by Kate Mason Rowland, Vol. I. (New York, 1892.)

The draft of The Declaration of Rights was largely the work of George Mason. The article on religion was presented by a committee to the convention as given.

9. *The Writings of James Madison*, edited by Gaillard Hunt, Vols. I, II. (New York, 1900, 1901.)

The writings of Madison need no special comment.

10. *The Proceedings of the Convention of Delegates held at the Capitol, etc.*, May, 1776. (Reprinted, Richmond, 1816.)

No special comment is needed.

11. *Journal of the House of Delegates of Virginia 1776, 1777*. (Richmond, 1827, 1828.)

No special comment is needed.

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12. *The Writings of Thomas Jefferson*, edited by Paul Leicester Ford, Vol. I. (New York, 1892.)

This extract is from the autobiography of Jefferson, prepared after 1809.

13. *Separation of Church and State in Virginia*, by H. J. Eckenrode. Virginia State Library, Special Report of the Department of Archives and History. (Richmond, 1910.)

Mr. Eckenrode prints in this volume a number of petitions from the manuscripts in the Virginia State Library.

14. *A History of the Rise and Progress of the Baptists in Virginia*, by Robert B. Semple. (Richmond, 1810.)

III. QUESTIONS AND SUGGESTIONS FOR STUDY

A. Religious Toleration in Virginia, 1689-1776

1. What conditions were prescribed by the English toleration act of 1689, to enable dissenting persons and preachers to assemble for religious worship and preaching?
2. What conditions were prescribed by the Virginia toleration act of 1699? Just what portion of the English act seems to be incorporated in the Virginia act? What is omitted? Does the phrase "according to one act of parliament" have in your opinion the effect of incorporating the English act entire into the Virginia laws?
3. What advantages did the dissenters gain by the explanatory act of 1711? In the light of this act do you infer that the act of 1689 confined the preacher to only one congregation? Would this act have any effect on Virginia law, since it was not specifically incorporated into such law?
4. In the light of these three acts what different views might be held respecting the extent of toleration to be granted in Virginia, the exact method to be employed in granting it, and the number of places or congregations which a preacher might minister to?

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5. If you judge that the act of 1689 was incorporated into the Virginia law by reference, how far would difference in environment, or other conditions, warrant a different interpretation or procedure than that practised in England?
6. On what conditions was Governor Gooch willing to grant permission to the clergymen of the Synod of Philadelphia to preach? Is there any significance in the phrase "western-side of our great mountains" in connection with his promise of toleration? Why?
7. What does he mean by the phrase "professing themselves ministers under the pretended influence of new light," etc.? (See historical introduction.)
8. What is his principal fear respecting the effects of the "new lights" on the religious condition of the colony?
9. What complaints does he make concerning the practices and teachings of certain dissenting clergymen? Supposing his statements were true; would he be justified in preventing them from preaching, according to the toleration acts?
10. What distinction does he have in mind in the phrases "liberty of conscience" and "freedom of speech"?
11. What "covenant" was intended according to the governor? Do you agree? Would "speaking all manner of evil against us" be sufficient reason for denying a dissenting preacher a license?
12. What distinction does he make in the characters of the New Side and Old Side clergy of the Presbyterian Church?
13. What is the significance of the "itinerant preachers" as compared with those preaching in "some certain place appropriated for that purpose"? What interpretation of the toleration act does Governor Gooch have? Do you agree with it?
14. What does Mr. Morris admit concerning the preaching of Rev. Mr. Roan? What does he deny? Do you infer that he had a license to preach?
15. Compare the evidence concerning the accusations against

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Mr. Roan as given in the grand jury indictment with the account given by Morris. What inference do you draw on the merits of the question so far as this evidence goes?

16. Supposing the words attributed to Mr. Roan in the indictments were actually spoken by him, was he within his rights under the toleration acts? Why?
17. What is your view of the relation between toleration and freedom of speech? Are they identical? Do the toleration acts indicate any difference?
18. What was the reason for, and effect of, the plan of licensing dissenters by the General Court rather than the County Court? Was the change in agreement with the toleration acts? Would you justify the change? Why? How was the General Court made up? See documents 8, 11, 18 and 20.
19. Do the governor's instructions supplement or change in any way the natural interpretation of the toleration acts?
20. Do you think that in granting Mr. Davies a license to preach in seven meeting-houses in five counties the General Court granted him a less or greater indulgence than the toleration acts intended?
21. What does Mr. Dawson fear will be the result of such a practice? Do you agree with him?
22. What was the argument of Mr. Davies for an eighth meeting-house?
23. If he had complied with all the requirements of the act what reason would there be for accusing him of promoting "Schism"?
24. State the Bishop of London's interpretation of the toleration act of 1689. Do you agree that the "clause in the 10th of Queen Anne" (*viz.*, the act of 1711 document No. 3) proves his interpretation? Do you agree that the toleration act did not allow the dissenters to set up "itinerant preachers"? Why?
25. Do you consider the Bishop of London's accusation of Davies fair—*viz.*, that he was "labouring to disturb the consciences of others"?
26. Was Governor Dinwiddie justified in refusing Mr. Davies

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another license for the reasons stated? Why? Are they in accordance with the toleration acts? Why?

27. Criticize favorably or unfavorably the argument of the clergy against Mr. Davies.
28. Do you agree with Mr. Davies that the English toleration act was "received into the body of the Virginia laws by our Legislature"? What does he say is the main point at issue?
29. Classify the arguments of Davies that are based strictly on the toleration acts and those that are based on the special conditions existing in Virginia.
30. Was "itinerating" illegal under the acts of toleration? Give the arguments for and against this view.
31. Is the parallel of the "chapels of ease" of the Church of England a valid one? Why?
32. State the interpretation given by Davies of the toleration act. Compare it with that of the Bishop of London. Which do you favor? Why?
33. Is Davies consistent in his assertion that the clause in the "10th of Queen Anne" (act of 1711) extends to Virginia, though not actually incorporated into the Virginia laws, while the act of 1689 "does not extend hither by virtue of its primitive enactment," etc.? How then do you account for his views?
34. Do you agree with the argument of Davies in defense of members of the Church of England joining the Presbyterians?
35. Is Mr. Dawson's interpretation of the clause in the 10th of Queen Anne a good one?
36. Note the list of eleven distinct questions which Davies asks the Bishop of London. Answer each of them: (1) according to the arguments of the Bishop of London, Commissary Dawson, Governors Gooch and Dinwiddie, and the clergy of the established church. (2) According to the arguments of Davies. (3) According to your own interpretation.
37. In each case which depend (1) directly on the toleration acts; (2) indirectly or by inference; (3) neither

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- directly nor indirectly? (4) Which exhibit prejudice or bias? (5) Which depend on differences in environment or religious conditions, or on the officials who were responsible for the enforcement of the acts?
38. What objection do the Baptists have to the granting of licenses by the General Court rather than the County Court?
39. State Madison's view of the status of toleration in 1774 with reasons.

B. Questions on Religious Liberty in Virginia, 1776-1786

1. Compare the article on religion in the Declaration of Rights as presented to the committee with the same as amended by the convention. What difference do you note? What is its significance? Why should the term "toleration" have been omitted in the amended article?
2. Did this article completely separate church and state? Why?
3. What religious privileges were still lacking after the adoption of the Declaration of Rights, according to the petition of the Baptists of Prince William County?
4. What additional grievances are mentioned in the memorial of the Presbytery of Hanover? Are these "national rights" as stated? Why?
5. What objection is offered to the establishment of any religion?
6. State the arguments in favor of establishment as given in the memorial of the clergy. What particular advantages are claimed for the English established church?
7. Is it true that this church had "shown no disposition to restrain them [dissenters] in the exercise of their religion"?
8. What was accomplished, according to Jefferson, by the act of December 5, 1776? What was left unsettled?
9. What arguments are given in the petitions from Caroline

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County in favor of a general assessment? Do you agree with any of them? Give your reasons. Are you opposed to any? Give reasons.

10. What did the inhabitants of Essex County hope for from a general assessment for religious purposes? Do you agree? Why?
11. Do you agree with the argument given in the petition from Amelia County that every man should "contribute as well to the support of Religion, as that of Civil Government"? Why?
12. Give a summary of the arguments, as stated in the petition for Rockingham County, against the control of religion by legislative bodies. Compare with those already given in favor of the same.
13. Is sufficient proof offered that religion would not fail if unsupported by a tax or contribution?
14. State the argument of the convention of the Presbyterian Church of the relation between legislative bodies and religion. Do you agree? Why?
15. What additional arguments are given against a general assessment? Do they all seem valid to you?
16. Do the Baptists add any new argument against assessment?
17. Summarize the arguments of Madison against the bill for "establishing a provision for teachers of the Christian religion." Do you agree with his statements regarding the rights of the majority and minority of the legislature? Which of Madison's arguments do not appeal to you? Why?
18. What arguments does Madison give for religious liberty that appear to grow out of the arguments for political liberty? Do you agree that the right to religious liberty is held "by the same tenure with all our other rights"?
19. What are the limits to the power of legislative bodies, according to Madison? Why?
20. Trace the evolution of religious liberty from the article in the Declaration of Rights to the preamble of the bill of December 17, 1785.

IV. The Sources

PART A

RELIGIOUS TOLERATION IN VIRGINIA, 1689-1776

1. *The Statutes at Large, from Magna Charter to . . . 1761*, by Danby Pickering, Vol. IX.

Pages 19-25. [The Act of Toleration, 1689.]

An act for exempting their Majesties protestant
5 subjects, dissenting from the church of England,
from the penalties of certain laws.

Forasmuch as some ease to scrupulous consciences
in the exercise of religion may be an effectual means
to unite their Majesties protestant subjects in in-
10 terest and affection:

Be it enacted . . . That . . . any person or per-
sons dissenting from the Church of *England*, that
shall take the oaths mentioned . . . and shall make
and subscribe the declaration mentioned¹ . . . [shall
15 be freed from attendance at the parish church and
penalties attached]. . . .

Provided always, That nothing herein contained

¹ For character of oaths, declaration, etc., see document No. 11
below.

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shall be construed to exempt any of the persons aforesaid from paying of tythes or other parochial duties, or any other duties to the church or minister, . . . [and] any preacher or teacher of any congregation of dissenting protestants, that shall make and subscribe the declaration aforesaid, and take the said oaths . . . and shall also declare his approbation of and subscribe the articles of religion mentioned¹ [shall not be liable to any of the penalties mentioned], . . . for officiating in any congregation for the exercise of religion permitted and allowed by this act . . . Provided . . . That all the laws made and provided for the frequenting of divine service on the Lord's day commonly called *Sunday*, shall be still in force, and executed against all persons that offend against the said laws, except such persons come to some congregation or assembly of religious worship, allowed or permitted by this act. . . . Provided always, That no congregation or assembly for religious worship shall be permitted or allowed by this act, until the place of such meeting shall be certified to the bishop of the diocese or to the arch deacon . . . or to the justices of the peace at the general or quarter sessions of the peace for the county, city, or place in which such meeting shall be held. . . .

¹ Exceptions were made of certain of the articles distasteful to dissenters, particularly to Baptists and Quakers. Papists were not included in the act.

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2. *The Statutes at Large, being a Collection of all the Laws of Virginia (1619-1792)*, by W. W. Hening, Vol. III. [The Virginia Toleration Act, 1699.]

5 Page 171.

. . . *Provided alwayes*, that if any person or persons dissenting from the church of England being every way qualified according to one act of parliament¹ . . . shall resort and meet at any congregation
10 or place of religious worship permitted and allowed by the said act of Parliament once in two months that then the said penaltyes and forfeitures imposed by the act for neglecting or refusing to resort to their parrish church or chappel as aforesaid shall not
15 be taken to extend to such person or persons, anything in this act to the contrary notwithstanding.²

3. *The Statutes at Large from Magna Charter, etc.* Vol. XII. [An Act for Preserving the Protestant Religion, 1711.]

20 Page 280.

. . . And whereas it is or may be doubted whether a preacher or teacher of any congregation of dissenting protestants, duly in all respects qualified according to the said act, be allowed, by virtue of
25 the said act, to officiate in any congregation in any county, other than that in which he so qualified himself, although in a congregation or place of

¹ That is the Toleration Act of 1689.

² This act does not specifically mention dissenting ministers.

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meeting duly certified and registered as is required by the said act; be it declared and enacted by the authority of the aforesaid, That any such preacher or teacher, so duly qualified according to the said
5 act shall be and is hereby allowed to officiate in any congregation, although the same be not in the county wherein he was so qualified; provided the said congregation, or place of meeting hath been before such officiating, duly certified and registred
10 or recorded according to the said act: and such preacher or teacher, shall, if required, produce a certificate of his having so qualified himself, under the hand of the clerk of the peace for the county or place where he so qualified himself, which certifi-
15 cate such clerk of the peace is hereby required to make; and shall also before any justice of the peace of such county or place where he shall so officiate, make, and subscribe such declaration, and take such oaths as are mentioned in the said act, if thereunto
20 required.

4. *Records of the Presbyterian Church in the United States of America, etc.* [Letter of Governor Gooch to the Synod of Philadelphia, recorded May 28, 1739.]

25 Page 147.

Sir: By the hands of Mr. Anderson I received an address signed by you, in the name of your brethren of the Synod of Philadelphia. And as I have been always inclined to favour the people who

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have lately removed from other provinces, to settle on the western side of our great mountains; so you may be assured, that no interruption shall be given to any minister of your profession who shall come
5 among them, so as they conform themselves to the rules prescribed by the act of toleration in England, by taking the oaths enjoined thereby, and registering the places of their meeting, and behave themselves peaceably towards the government.
10 This you may please to communicate to the Synod as an answer of theirs. Your most humble servant.¹

WILLIAM GOOCH.

5. *Records of the Presbyterian Church, etc.* [Charge of Governor Gooch to the Grand Jury of the General Court of Virginia, April 18, 1745.]
15

Pages 182-183.

[Gentlemen of the Grand Jury], . . . Without taking any notice of the ordinary matters and things you
20 are called to attend, and sworn to make inquisition for, I must, on this occasion, turn to your thoughts and recommend to your present service, another subject of great importance, which, I thank God, has been unusual, but I hope will be most effectual; I

25 ¹ This letter is in answer to a request May 28, 1738, from the Synod of Philadelphia, representing the Old Side branch of the church, asking that settlers of the Presbyterian faith about to settle in the "remote parts of your government" be allowed "the liberty of their consciences, and of worshipping God in a way agree-
30 able to the principles of their education." *Ibid.*, p. 142.

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mean the information I have received of certain *false teachers* that are lately crept into this government; who, without orders or licenses, or producing any testimonial of their education or sect, professing themselves ministers under the pretended influence of *new light*, *extraordinary impulse*, and *such like* fanatical and enthusiastical knowledge, lead the innocent and ignorant people into all kinds of delusion; and in this frantic and profane disguise, though such is their heterodoxy, that they treat all other modes of worship with the utmost scorn and contempt, yet, as if they had bound themselves by an oath to do many things against the religion of the blessed Jesus, that pillar and stay of the truth, our reformed church, to the great dishonour of Almighty God, and the discomfort of serious Christians, they endeavour to make their followers believe that salvation is not to be obtained in her communion.

As this denunciation, and, if I am rightly advised, in¹ words not decent to repeat, has been by one of them publicly affirmed, and shows what manner of spirit they all of them are of, in a country hitherto remarkable for uniformity in worship, and where the saving truths of the Gospel are constantly inculcated; I did promise myself, that either their preaching would be in vain, or that an insolence so criminal would not long be connived at.

¹ That we worship the devil, and are damned.

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And therefore, gentlemen, since the workers of a deceitful work, blaspheming our sacraments, and reviling our excellent liturgy, are said to draw disciples after them, and we know not whereunto this
5 separation may grow, but may easily foretell into what a distracted condition, by longer forbearance, this colony will be reduced; we are called upon by the rights of society, and what I am persuaded will be with you at least as prevailing an inducement,
10 by the principles of Christianity, to put an immediate stop to the devices and intrigues of these associated schismatics; who having, no doubt, assumed to themselves the apostasy of our weak brethren, we may be assured there is not anything so absurd
15 but what they will assert, nor any doctrines or precepts so sacred but what they will pervert and accommodate to their *favourite theme*, railing against our religious establishment, for which in any other country, the British dominions only excepted, they
20 would be very severely handled.

However, not meaning to inflame your resentment as we may, without breach of charity, pronounce, that it is not liberty of conscience, but freedom of speech, they so earnestly prosecute; and we
25 are very sure that they have no manner of pretence to any shelter under the acts of toleration, because, admitting they have had regular ordination, they are by these acts obliged, nor can they be ignorant of it, not only to take the oaths, and with the test

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to subscribe, after a deliberate reading of them, some of the articles of our religion, before they presume to officiate, but, that in this indulgent grant, though not expressed, a covenant is intended, whereby they engage to preserve the character of conscientious men, and not to use their liberty for a cloak of maliciousness.

So that I say, allowing their ordination, yet, as they have not, by submitting to these essential points, qualified themselves to gather a congregation, or, if they had, in speaking all manner of evil against us, have forfeited the privilege due to such compliance, insomuch that they are entirely without excuse, and their religious profession is very justly suspected to be the result of jesuitical policy, which also is an iniquity to be punished by the judges.

I must, as in duty bound to God and man, charge you in the most solemn manner, to make strict inquiry after these seducers; and if they or any of them are still in the government, by presentment or indictment, to report them to the court, that we, who are in authority under the Defender of our Faith, and the appointed guardians to our constitution in church and state, exercising our power in this respect for the protection of the people committed to our care, may show our zeal in the maintenance of the true religion; not as the manner of some is, by violent oppression, but in putting to silence by such method as our laws direct, the calum-

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nies and invectives of these bold accusers, and in dispelling, as we are devoutly disposed, so dreadful and dangerous a combination.

In short, gentlemen, we should deviate from the pious path we profess to tread in, and should be unjust to God, to our king, to our country, to ourselves, and to our posterity, not to take cognizance of so great wickedness, whereby the grace of our Lord Jesus Christ is turned into lasciviousness.

10 6. *Records of the Presbyterian Church, etc.* [Minutes of the Synod of Philadelphia, May 27, 1745.]

Pages 181-182.

A letter from a gentleman in Virginia, with a printed charge given by the governor of that colony to the grand jury, was laid before the Synod; by which it appears that the government of that colony is highly provoked by the conduct of some of the new party who have preached there, and therefore the Synod judge it necessary to send an address to that governor, informing him of the distinction between this Synod and that separated party, that so their conduct may not be imputed to us, nor provoke that government to deny us the liberties and favours we have enjoyed under it. . . .¹

25 7. *Records of the Presbyterian Church, etc.* [Governor Gooch to the Synod of Philadelphia, June 20, 1745.]

¹ Instructions to Governor Gooch provided for toleration. For an extract from these instructions see document No. 10 below,

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Page 185.

Gentlemen:—The address you were pleased to send me as a grateful acknowledgment for the favour which teachers of your persuasion met with in Virginia, was very acceptable to me, but altogether needless to a person in my station, because it is what by law they are entitled to.

And in answer to your present address, intended to justify yourselves and members from being concerned in a late outrage committed against the purity of our worship, and the sacred appointment of pastors for the services of the altar of the established church, which some men calling themselves ministers, were justly accused of in my charge to the grand jury, you must suffer me to say, that it very nearly affects me, because it seems to insinuate as if I was so uncharitable as to suspect men of your education and profession could be guilty of unchristian expressions that can only tend to the increase of schism and irreligion, which I give you my word was far from my thoughts.

As the wicked and destructive doctrines and practices of itinerant preachers ought to be opposed and suppressed by all who have concern for religion, and just regard to public peace and order in church and state, so your missionaries producing proper testimonials, complying with the laws, and performing divine service in some certain place appropriated for that purpose, without disturbing the quiet and

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unity of our sacred and civil establishments, may be sure of the protection of, Reverend Sirs, your most humble servant,

WILLIAM GOOCH.

- 5 8. *The State of Religion among the Protestant Dissenters in Virginia, etc.*, by Samuel Davies. [The account of Samuel Morris respecting the early religious history of the Presbyterians in Virginia, about 1745.]

10 Pages 14-15.

... Some Time after this, the Rev. Mr. *John Roan* was sent by the Presbytery of Newcastle, (under whose immediate care we had voluntarily placed ourselves) to supply us. He continued with us longer
15 than either of the former; and the happy Effects of his Ministrations are still apparent, in many Instances. He preached at sundry Places at the earnest Solicitations of the People, which was the happy Occasion of beginning and promoting the religious Concern,
20 where there were little Appearances of it before. This, together with his speaking pretty freely about the Degeneracy of the Clergy in this Colony, gave a general Alarm, and some Measures were concerted to suppress us. To incense the Indignation of the
25 government the more, a perfidious Wretch deposed, he heard Mr. *Roan* use some blasphemous Expressions in his Sermon, and speak in the most shocking & reproachful manner of the established Church. An indictment was thereupon drawn up against

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Mr. Roan, (tho' by that Time he had departed the Colony,) and some of the People who had invited him to preach at their Houses, were cited to appear before the General Court, (which, in this Government, consists of the Governour or Commander-in-Chief, and His Majesty's Council,) and two of them were fined *twenty shillings* sterling, besides the Costs, which in one of the Cases would have amounted to near *fifty Pounds*, had the Evidences demanded their Due. While my Cause was upon Trial, I had Reason to rejoyce that the Throne of Grace is accessible in *all Places*, and that helpless Creatures can waft up their Desires *unseen*, to God, in the midst of a Crowd. Six Evidences were cited to prove the Indictment against *Mr. Roan*; but their Depositions were in his Favour; and as for the Evidence mentioned just now, who¹ accused him of Blasphemy against God and the Church, when he heard of Messirs *G. Tennent's* and *S. Finley's* Arrival, he fled, and has not returned since; so that the Indictment was drop'd. I had Reason to fear being banished the Colony, and all Circumstances seem'd to threaten the Extirpation of Religion among the Dissenters in these Parts.

9. *Sketches of Virginia, Historical and Biographical*, by William Henry Foote. [Presentment of the Grand Jury of the General Court of Virginia, April 19, 1745.]

¹ Probably James Axford, mentioned in the next document.

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Pages 137-138.

. . . We, the Grand Jury, on information of James Axford, do present John Roan for reflecting upon and vilifying the Established Religion, in divers sermons, which he preached at the house of Joshua Morris, in the parish and county of James City, on the 7th, 8th, and 9th of January last, before a numerous audience, in the words following, to wit,—
'At church you pray to the Devil'—and *'That your*
10 *good works damn you, and carry you to hell,'* —*'That all your ministers preach false doctrine, and that they, and all who follow them, are going to hell,'*—and *'The church is the house of the Devil,—that when your ministers receive their orders they swear that it is the spirit*
15 *of God that moves them to it, but it is the spirit of the Devil, and no good can proceed out of their mouth.'*

On the information of Benjamin Cocke, we present Thomas Watkins, the son of Edward Watkins,
20 kins, of the parish and county of Henrico, for reflecting on the Established Religion, on the 12th of this instant, by saying,—*'your churches and chappels are no better than the synagogues of Satan.'*

25 10. *Historical Collections relating to the American Colonial Church*, by William Stevens Perry, Vol. I—Virginia. [William Dawson, Commissary of Virginia, to the Bishop of London, July 27, 1750.]

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Page 366.

My Lord,

. . . Seven meeting houses situated in 5 counties have been licenced by the General Court for M^r Samuel Davies. In these counties there are eight
5 ministers of the established Church. The Justices of New Kent County lately granted him a license to have a meeting House in St. Peter's parish, but their order has been superseded by the General
10 Court, it being judged that this affair is not within the jurisdiction of County Courts. The Instruction alluded to in the answer of Peyton Randolph, Esq^r, Attorney general of Virginia, to the first
15 Question is as follows: "You are to permit a liberty of Conscience to all persons except papists, so they be contented with a quiet and peacable enjoyment of the same, not giving offence or scandal to the Government."¹ I earnestly request the favour of your Lordship's opinion, Whether in licensing so
20 many houses for one teacher they have not granted him greater indulgence than either the King's instruction, or the Act of toleration intended? It is not to be dissembled that several of the laity, as well as Clergy are uneasy on account of the counte-
25 nance and encouragement he has met with, and I cannot forbear expressing my own concern to see

¹ This quotation refers to the instructions given by the King to the Governor of Virginia respecting religious toleration, and supplements the toleration acts of England and Virginia given above in
30 documents Nos. 1, 2, and 3.

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Schism spreading itself through a colony which has been famous for uniformity of Religion.

11. *Historical Collections, etc.* [Samuel Davies to Dr. Doddridge,¹ October 2, 1750.]

5 Pages 370-371.

... But it has been an unhappiness to lie under the odium of the Government and Clergy as incendiaries and promoters of Schism, and sundry measures have been and still are pursued to restrain and
10 suppress us. Sundry of the people have been indicted and fined and tho' our side are willing to comply with the act of Toleration (as I have actually done), yet the Government under a variety of Umbrages has endeavored to infringe upon my
15 Liberties and to exclude my Brethren from settling here. It has been alleged that the act of tolleration does not extend to this Colony (tho' by the by our Legislature has expressly adopted it so far at least as to exempt Protestant Dissenters from penalty
20 for absenting themselves from Church), and the Counsel have lately determined that a dissenting Minister has no right to more meeting houses than one, in consequence of which they have superseded a License granted by a County Court for an Eighth
25 Meeting house amongst a number of people that live 20 or 30 Miles distant from the nearest of the seven Meeting houses formerly Licensed by the

¹ Dr. Doddridge was a prominent Presbyterian clergyman in London who was favorable to the cause of toleration in Virginia.

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General Court, and I fear will confine me entirely to one; which will be an intolerable hardship to the people, as they are so dispersed that they can not convene at one place. I should be glad, Sir, to have
5 your sentiments on this point, and particularly that you would inform me whether a dissenting Minister is tolerated with you to have more Meeting houses than one in case the bounds of his congregation require it. . . . To qualify you to interceed for us, I
10 would further observe, that we claim no other liberties than those granted by the act of toleration and those only upon our compliance with all its requirements that all our Ministers attest their Orthodoxy by subscribing to the West-Minster Confession of
15 Faith and Catechism at their Licensure & Ordination and such of the articles of the Church of England as that act imposes on us when we settle in this Colony; that we attest our Loyalty by taking the usual Oaths to His Majesty's person and Government, and by all other public and private methods that belong to our province; and that our very
20 enemy don't pretend to impeach us of any practical immorality.

12. *Sketches of Virginia, etc.* [Bishop of London to
25 (William Dawson?), December 25, 1750.]

Page 177.

11. . . . As to the Davies' case, as far as I can judge, your Attorney General is quite in the right, for the Act of Toleration confines the preachers to a par-

Source Problems in United States History

ticular place, to be certified and entered, and so the practice here has been; and it was so far admitted to be the case that the Dissenters obtained a clause in the 10th of Queen Anne, to empower any dissenting minister to preach occasionally in any other county but that where he was licensed. I observe in one of the licenses, (a copy of which you sent me) Davies is permitted to assemble, &c., at several meeting-houses to be erected on the lands of Joseph Shelton, &c., Now, the Act of Toleration requires that the places of meeting shall be certified and registered, but how houses that are not in being can be certified and registered, I can't understand. The Act of Toleration was intended to permit the Dissenters to worship in their own way, and to exempt them from penalties, but it never was intended to permit them to set up itinerant preachers, to gather congregations where there was none before. They are, by the act of William and Mary, to qualify in the county where they live, and how Davies can be said to live in five different counties, they who granted the license must explain.

13. *Historical Collections, etc.* [Bishop of London to Dr. Doddridge, May 11, 1751.]

25 Page 372.

. . . If you suppose the Church of England to be (which I am persuaded you do not), in the same state of corruption as the Romish church was at the time of the Reformation, there wants indeed no Licence,

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or authority from the Government to justify the methods of conversion which M^r Davies is pursuing; and which the Methodists now do, and long have pursued. But if the Act of Toleration, was
5 desired for no other view, than to ease the consciences of those who could not conform,—if it was granted with no other view, how is M^r Davies's conduct to be justified, who under the colour of a Toleration to his own conscience is labouring to
10 disturb the consciences of others, and the peace of a Church acknowledged to be a true Church of Christ? He came 300 Miles from home, not to serve people who had scruples, but to a Country where the Church of England had been
15 Established from its first plantation, [*viz.* Hanover County] and where there were not above 4 or 5 dissenters within 100 Miles of it, if not above six years ago. M^r Davies says, in his letter to you, 'We claim no other liberties than those granted by the act of
20 Toleration,' so that the state of the question is admitted, on both sides, to be this: how far the act of Toleration will justify M^r Davies, in taking upon himself to be an itinerant preacher and travelling over many Counties to make Converts, in a
25 Country too where till very lately there was not a Dissenter from the Church of England?

14. *Historical Collections, etc.* [Governor Robert Dinwiddie to the Bishop of London, June 5, 1752.]

Source Problems in United States History

Pages 395-396.

... There is another affair that has given me much trouble. My Lord, when I left this Colony about six years ago there were no Dissenting Meeting
5 Houses, but a few Quakers. One M^r Davis a dissenting Teacher from Pennsylvania has been indulged with Licences for seven Meeting houses in five different counties at least in extent upwards of 200 Miles. He applied to me for a Licence for
10 one more which I refused, and that brought on a long conference with him. I told him I thought it impossible for him to discharge the duties of a good pastor to so many different congregations dispersed at so great a distance one from the other. I took
15 upon me to tell him what I conceived to be the duty of a Minister, and that in a particular and plain manner, and that as he did not discharge these duties, which I conceived he could not do without a close residence with his hearers, I must look on
20 him as an Itinerant preacher more out of lucrative view than the salvation of the people. After a long silence he desired I would not look on him as an Itinerant preacher, which character he abhor'd, but agreed with me that in the Meeting houses al-
25 ready Licensed he could not discharge the essential duties of his Ministry and therefore desired me to admit one M^r Todd for his assistant. I told him I had a due regard for people of tender consciences, and on M^r Todd's producing his ordination Certif-

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icate, &c., he was admitted to be his assistant after taking the oaths and complying with the other requisites. He (Mr. Davis), told me he profess'd himself a Member of the Church of Scotland. I told
5 him that church allowed of no pluralities, and therefore if he would confine himself to one Meeting house or to the limits of a County, he should meet with all the protection and indulgence the act of Toleration allows, while he continued peaceable and quiet.

10 15. *Historical Collections, etc.* [Petition of some of the Clergy of Virginia to the House of Burgesses, 1751.]

Pages 381-383.

Sheweth:

15 That there have been frequently held in the Counties of Hanover, Henrico, Goochland, & some others, for several years past, numerous Assemblies, especially of the common People, upon a pretended religious Account; convened sometimes by merely
20 Lay Enthusiasts, who, in those meetings, read sundry fanatical Books & used long extempore prayers, and Discourses; sometimes by strolling pretended Ministers; and at present by one M^r Samuel Davies, who has fixed himself in Hanover; and in the
25 Counties of Amelia and Albemarle, by a person who calls himself M^r Cennick well known in England, by his strict Intimacy with the Rev^d M^r Whitefield.

That tho' these Teachers, and their Adherents (except the above mentioned Cennick), assume the

Source Problems in United States History

Denomination of Presbyterians, yet, we think, they have no just claim to that character; as the Ring-leaders of the Party were, for their erroneous Doctrines, and Practises, excluded the Presbyterian
5 Synod of Philadelphia, in May, 1741 (as appears by an Address of said Synod to our Governour), nor have they since that time, made any Recantation of their Errors, nor been readmitted as Members of that Synod which Synod, tho' of many years stand-
10 ing, never was reprehended for Errors in Doctrine, Discipline or Government, either by the established Kirk of Scotland, the Presbyterian Dissenters in England, or any other body of Presbyterians whatsoever; whence we beg leave to conclude, that the
15 distinguishing Tenets of these Teachers before mentioned, are of a dangerous consequence to Religion in general; and that the Authors and propagators thereof, are deservedly stigmatized with a name unknown, till of late in this part of the World.

20 That your Petitioners further humbly conceive, that tho' these excluded Members of the Synod of Philadelphia were really Presbyterians, or of any of the other sects tolerated in England, yet there is no Law of this Colony by virtue whereof they can
25 be entitled to a Licence to preach, far less to send forth their Emissaries, or to travel themselves over several Counties (to many places without invitation), to gain Proselytes to their way; 'to inveigle ignorant and unwary People with their Sophistry,' and

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under pretence of greater Degrees of Piety among them, than can be found among the Members of the Established Church, to seduce them from their lawful Teachers, and the Religion hitherto professed in this Dominion.

16. *Sketches of Virginia, etc.* [Samuel Davies to Dr. Benjamin Avery, May 21, 1752.]

Pages 208-209.

. . . I am fully satisfied, sir, that as you intimate
10 the Act of Uniformity and other penal laws against non-conformity are not in force in the colonies; and consequently that the dissenters have no right nor indeed any need to plead the Act of Toleration as an exemption from those penal laws. But sir, our Legis-
15 lature here has passed an act of the same kind with those laws, though the penalty is less, requiring all adult persons to attend on the established church. As this act was passed since the Revolution, it was necessary that Protestant dissenters should be ex-
20 empted from its obligations and tolerated to worship God in separate assemblies; (though, indeed, at the time of its enactment, viz., the 4th of Queen Ann, there was not a dissenting congregation, except a few Quakers, in the colony) and for this purpose,
25 our Legislature thought fit to take in the act of Parliament made for that end in England, rather than pass a new one peculiar to this colony. This, sir, you may see in my remonstrance to the Governor and Council which I find has been laid before you.

Source Problems in United States History

Now it is with a view to exempt ourselves from the obligations of the above law made by our Legislature, that we plead the Act of Toleration, and we plead it not as *an English law*, for we are convinced it does
5 not extend hither by virtue of its primitive enactment, but as *received into the body of the Virginia laws* by our Legislature. And though for some time, some pretended to scruple, and others denied that the Act of Toleration is in force here even in this sense; yet
10 now I think it is generally granted, and all the question is about the intent and meaning of this Act; particularly whether a dissenting congregation, that is very much dispersed, and cannot meet at one place, may claim a right by virtue of said act, to
15 have a plurality of places licensed for the convenience for the sundry parts of the congregation? And whether it allows a dissenting minister to divide his labours among two congregations at sundry meeting-houses when by reason of the scarcity
20 of ministers each congregation cannot be furnished with one?

17. *Sketches of Virginia, etc.* [Samuel Davies to the Bishop of London, January 10, 1752.]

Pages 184-195.

25 . . . These things, my lord, being impartially considered, I dare submit it to your lordship,

Whether my itinerating in this manner in such circumstances be illegal? And whether, though I cannot live in five different counties at once, as your

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lordship observes, I may not lawfully officiate in them, or in as many as the peculiar circumstances of my congregation, which though but one particular church, is dispersed through sundry counties, render necessary?

Whether contiguity of residence is necessary to entitle dissenters to the liberties granted by the Act of Toleration? Whether when they cannot convene at one place, they may not, according to the true intent and meaning of that Act, obtain as many houses licensed as will render public worship accessible to them all? And whether if this liberty be denied them, they can be said to be tolerated at all? i. e. Whether *dissenters are permitted to worship in their own way*, (which your lordship observes was the intent of the Act) who are prohibited from worshipping in their own way, unless they travel thirty, forty, or fifty miles every Sunday? . . .

. . . Whether, when there are a few dissenting families in one county and a few in another, and they are not able to form a distinct congregation or particular church at each place, and yet all of them conjunctly are able to form one, though they cannot meet statedly at one place; whether, I say, they may not legally obtain sundry meeting-houses licensed, in these different counties, where their minister may divide his time according to the proportion of the people, and yet be looked upon as one organized church? And whether the minister

Source Problems in United States History

of such a dispersed church, who alternately officiates at these sundry meeting-houses should on this account be branded as an itinerant?

Whether, when a number of dissenters, sufficient
5 to constitute two distinct congregations, each of them able to maintain a minister, can obtain but one by reason of the scarcity of ministers, they may not legally share in the labours of that one, and have as many houses licensed for him to officiate
10 in, as their distance renders necessary? And whether the minister of such an united congregation, though he divides his labours at seven different places, or more, if their conveniency requires it, be not as properly a *settled* minister as though he preached
15 but at one place, to but one congregation? Or (which is a parallel case) whether the Rev. Mr. Barrett, one of the ministers in Hanover, who has three churches situated in two counties, and whose parish is perhaps sixty miles in circumference, be
20 not as properly a settled parish minister, as a London minister whose parishioners do not live half a mile from his church?

I beg leave, my lord, farther to illustrate the case by a relation of a matter of fact, and a very possible
25 supposition. '

It very often happens in Virginia, that the parishes are twenty, thirty, forty, and sometimes fifty or sixty miles long, and proportionately broad; which is chiefly owing to this, that people are not so thickly

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settled, as that the inhabitants in a small compass should be sufficient for a parish; and your lordship can easily conceive that the inhabitants of this infant colony are thinner than in England. The
5 Legislature here has wisely made provision to remedy this inconveniency, by ordering sundry churches or chapels of ease to be erected in one parish, that one of them at least may be tolerably convenient to all the parishioners; and all of these are under the
10 care of one minister, who shares his labours at each place in proportion to the number of people there. In Hanover, a pretty populous county, there are two ministers, one of whom has two churches, and the other, as I observed, has three; the nearest of which
15 are twelve or fifteen miles apart; and in some of the frontier counties the number of churches in a parish is much greater. And yet the number of churches does not multiply the parish into an equal number of parishes; nor does the minister by officiating at
20 so many places, incur the odious epithet of an itinerant preacher, a pluralist or nonresident. (Here again, my lord, I appeal to all the colony to attest this representation.) Now, I submit it to your lordship, whether there be not at least equal reason
25 that a plurality of meeting-houses should be licensed for the use of the dissenters here, since they are more dispersed and fewer in number? . . . The act of William and Mary, my lord, does not particularize the number of houses to be licensed for the

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use of one congregation; but only requires in general, that all such places shall be registered before public worship be celebrated in them; from which it may be reasonably presumed, the number is to
5 be wholly regulated by the circumstances of the congregation. It is, however, evident that such a number was intended as that all the members of the congregation might conveniently attend. But to return. I submit it also to your lordship whether
10 there be not as little reason for representing me as an itinerant preacher, on account of my preaching at so many places for the conveniency of one congregation, as that the minister of a large parish, where there are sundry churches or chapels of ease,
15 should be so called for preaching at these sundry places, for the convenience of the parish? . . .

To all this, my lord, I may add, that though the Act of Toleration should not warrant my preaching in so many counties; yet, since, as your lordship
20 observes, 'the dissenters obtained a clause in the 10th Queen Anne, to empower any dissenting preacher to preach occasionally in any other county but that where he was licensed;' and since the reason of the law is at least as strong here as in England,
25 and consequently it extends hither, my conduct is sufficiently justified by it. . . .

For my farther vindication, my lord, I beg leave to declare, and I defy the world to confute me, that in all sermons I have preached in Virginia,

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I have not wasted one minute in exclaiming or reasoning against the peculiarities of the established church; nor so much as assigned the reasons of my non-conformity. I have not exhausted
5 my zeal in railing against the established clergy, in exposing their imperfections, some of which lie naked to my view, or in depreciating their characters. No, my lord, I have matters of infinitely greater importance to exert my zeal and spend my
10 time and strength upon;—To preach repentance towards God, and faith towards our Lord Jesus Christ—To alarm secure impenitents; to reform the profligate; to undeceive the hypocrite; to raise up the hands that hang down, and to strengthen the
15 feeble knees;—These are the doctrines I preach, these are the ends I pursue; and those my artifices to gain proselytes: and if ever I divert from these to ceremonial trifles, let my tongue cleave to the roof of my mouth. Now, my lord, if people adhere
20 to me on such accounts as these, I cannot discourage them without wickedly betraying the interests of religion, and renouncing my character as a minister of the gospel. If the members of the Church of England come from distant places to the meeting-
25 houses licensed for the use of professed dissenters, and upon hearing, join with them, and declare themselves Presbyterians, and place themselves under my ministerial care, I dare say, your lordship will not censure me for admitting them. And if these new

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proselytes live at such distance that they cannot meet statedly at the places already licensed, have they not a legal right to have houses licensed convenient to them, since they are as properly professed
5 dissenters, in favour of whom the Act of Toleration was enacted, as those that have been educated in non-conformity? There is no method, my lord, to prevent the increase of our number in this manner, but either the prohibiting of all conformists to attend
10 occasionally on my ministry; which neither the laws of God nor the land will warrant: or the Episcopal ministers preaching the same doctrines which I do; as I humbly conceive they oblige themselves by subscribing their own articles; and had this
15 been done, I am verily persuaded there would not have been one dissenter in these parts: or my absolutely refusing to receive those into the community of the dissenters, against whom it may be objected that they once belonged to the Church of England;
20 which your lordship sees is unreasonable. 'Tis the conversion and salvation of men I aim to promote; and genuine Christianity, under whatever various forms it appears, never fails to charm my heart.¹

18. *Historical Collections, etc.* [Thomas Dawson to
25 the Bishop of London, July 23, 1753.]

Page 407.

. . . I should not have troubled your Lordship at

¹ This letter was not submitted to the Bishop of London. See *Sketches of Virginia, etc.*, p. 206.

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this time with any thing relating to M^r Davies (as my brother has writ fully upon that subject), had he not last June, notwithstanding the 7 meeting houses situated in 5 different Counties already
5 licensed for himself & his assistant M^r Todd, applied to have a meeting house in S^t Peter's Parish, the place formerly licensed by the justices of New Kent, but their order Superceded by the general court. However the Gov^t and council positavely refused
10 him. M^r Davies produced Sir D. Ryder's opinion (a copy of which I here transmit to your Lordship), in which I humbly conceive, one extract from the toleration act is considered without any regard to the other parts of it: For if a Dissenting minister
15 had such a liberty allowed them by that Act, how came they to apply for & obtain a clause in the 10th of Qu. Ann^e, to permit any dissenting teacher to preach occasionally in any other County but that where he was licensed.

20 19. *Journals of the House of Burgesses of Virginia*, edited by J. P. Kennedy. [Petition of Baptists of the County of Lunenburg, February 12, 1772.]

Page 160.

25 A *Petition* of several persons of the county of *Lunenburg*, whose Names are thereunto subscribed, was presented to the House and read; setting forth that the Petitioners, being of the Society of Christians called *Baptists*, find themselves restricted in the

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Exercise of their Religion, their Teachers imprisoned under various Pretences, and the Benefits of the Toleration Act denied them, although they are willing to conform to the true Spirit of that Act, and
5 are loyal and quiet Subjects; and therefore praying that they may be treated with the same kind Indulgence, in religious Matters, as *Quakers, Presbyterians*, and other Protestant Dissenters, enjoy.

20. *Journals of the House of Burgesses, etc.* [Petition
10 of Baptists of Amelia County, February
24, 1772.]

Pages 185-186.

. . . If the Act of Toleration does not extend to this colony, they are exposed to severe Persecution;
15 and, if it does extend hither, and the Power of granting Licenses to Teachers be lodged, as is supposed, in the General Court alone, the Petitioners must suffer considerable Inconveniencies, not only because that Court sits not oftener than twice in the Year, and
20 then at a Place far remote, but because the said Court will admit a single Meeting-House, and no more, in one County.¹ . . .

21. *The Writings of James Madison, etc.*, edited by Gaillard Hunt, Vol. I. [James Madison to William
25 Bradford, January 24, 1774, April 1, 1774.]

¹ "I knew the General Court to refuse a license for a Baptist meeting-house in the county of Richmond, because there was a Presbyterian meeting-house already in the county, although the Act of Toleration considered them distinct societies."—William Fristoe,
30 *History of Ketockton Baptist Association*, p. 69.

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Pages 19-23.

. . . Union of religious sentiments begets a surprising confidence, and ecclesiastical establishments tend to great ignorance and corruption; all of which facilitates the execution of mischievous projects. . . .

I want again to breathe your free air. I expect it will mend my constitution and confirm my principles. I have indeed as good an atmosphere at home as the climate will allow; but have nothing to brag
10 of as to the state and liberty of my country. Poverty and luxury prevail among all sorts; pride, ignorance, and knavery among the priesthood, and vice and wickedness among the laity. This is bad enough,
15 but it is not the worst I have to tell you. That diabolical, hell-conceived principle of persecution rages among some; and to their eternal infamy, the clergy can furnish their quota of imps for such business. . . . There are at this time in the adjacent
20 country not less than five or six well-meaning men in close jail for publishing their religious sentiments, which in the main are very orthodox. I have neither patience to hear, talk, or think of anything relative to this matter; for I have squabbled and scolded, abused and ridiculed, so long about it
25 to little purpose, that I am without common patience. So I must beg you to pity me, and pray for liberty of conscience to all.

[April 1, 1774.]

. . . Our Assembly is to meet the first of May, when

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it is expected something will be done in behalf of the dissenters. Petitions, I hear, are already forming among the persecuted Baptists, and I fancy it is in the thought of the Presbyterians also, to inter-
5 cede for greater liberty in matters of religion. For my own part, I cannot help being very doubtful of their succeeding in the attempt. The affair was on the carpet during the last session; but such incredible and extravagant stories were told in the House of
10 the monstrous effects of the enthusiasm prevalent among the sectaries, and so greedily swallowed by their enemies, that I believe they lost footing by it. And the bad name they still have with those who pretend too much contempt to examine into
15 their principles and conduct, and are too much devoted to ecclesiastical establishment to hear of the toleration of the dissentients, I am apprehensive, will be again made a pretext for rejecting their request.

20 The sentiments of our people of fortune and fashion on this subject are vastly different from what you have been used to. That liberal, catholic, and equitable way of thinking, as to the rights of conscience, which is one of the characteristics of a free
25 people, and so strongly marks the people of your province, is but little known among the zealous adherents to our hierarchy. We have, it is true, some persons in the Legislature of generous principles, both in Religion and Politics; but number, not merit, you

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know, is necessary to carry points there. Besides, the clergy are a numerous and powerful body, have great influence at home by reason of their connection with and dependence on the Bishops and Crown, and
5 will naturally employ all their arts and interest to depress their rising adversaries; for such they must consider dissenters who rob them of the good will of the people, and may, in time, endanger their livings and security.

PART B

RELIGIOUS LIBERTY IN VIRGINIA, 1776-1786

1. *The Life of George Mason*, by Kate Mason Rowland, Vol. I, Appendix X. [Declaration of Rights, Article 14.]

Page 435.

- 5 (a) As drafted by Mason and presented to the committee:

That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore,
10 that all men should enjoy the fullest toleration in the exercise of religion, according to the dictates of conscience, unpunished and unrestrained by the magistrate, unless, under color
15 of religion, any man disturb the peace, the happiness, or the safety of society. And that it is the mutual duty of all to practise Christian forbearance, love, and charity towards each other.¹

20 ¹ This article is in the handwriting of Mason (see facsimile, p. 241.)

Religious Toleration and Freedom in Virginia

2. *The Proceedings of the Convention of Delegates, etc.*, June 12, 1776. [Declaration of Rights, Article 16.]

Page 43.

5 (b) As amended by the convention.

That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore, all men are equally
10 entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practise Christian forbearance, love, and charity, towards each other.¹

3. *Proceedings of the Convention, etc.* [Petition of
15 Baptists of Prince William County, June 20, 1776.]

Page 58.

A petition of sundry persons of the Baptist Church, in the county of Prince William, whose
20 names are thereunto subscribed, was presented to the Convention and read; setting forth, that at a time when this colony, with the others, is contending for the civil rights of mankind, against the enslaving schemes of a powerful enemy, they are persuaded
25 the strictest unanimity is necessary among ourselves; and, that every remaining cause of division may, if possible, be removed, they think it their duty to pe-

¹ Madison was principally responsible for this change in the article.—Hunt, *Ibid.*, p. 41.

Source Problems in United States History

tition for the following religious privileges, which they have not yet been indulged with in this part of the world, to wit: That they be allowed to worship God in their own way, without interruption; that they be permitted to maintain their own ministers, and none others; that they be married, buried, and the like, without paying the clergy of other denominations; that, these things granted, they will gladly unite with their brethren, and to the utmost of their ability promote the common cause.

4. *Sketches of Virginia, etc.* [Memorial of the Presbytery of Hanover, October 24, 1776.]

Pages 323-324.

To the Honorable the General Assembly of Virginia:

15 The Memorial of the Presbytery of Hanover humbly represents:

.
It is well known, that in the frontier counties, which are justly supposed to contain a fifth part of the inhabitants of Virginia, the dissenters have borne the heavy burdens of purchasing glebes, building churches, and supporting the established clergy, where there are very few Episcopalians, either to assist in bearing the expense, or to reap the advantage; and that throughout the other parts of the country, there are also many thousands of zealous friends and defenders of our State, who, besides the invidious, and disadvantageous restrictions to which they have been subjected, annually pay large taxes

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to support an establishment, from which their consciences and principles oblige them to dissent: all which are confessedly so many violations of their natural rights; and in their consequences, a restraint
5 upon freedom of inquiry, and private judgment.

In this enlightened age, and in a land where all, of every denomination are united in the most strenuous efforts to be free, we hope and expect that our representatives will cheerfully concur in
10 removing every species of religious, as well as civil bondage. Certain it is, that every argument for civil liberty, gains additional strength when applied to liberty in the concerns of religion; and there is no argument in favour of establishing the Christian
15 religion, but what may be pleaded, with equal propriety, for establishing the tenets of Mahomed by those who believe the Alcoran: or if this be not true, it is at least impossible for the magistrate to adjudge the right of preference among the various sects that
20 profess the Christian faith, without erecting a chair of infallibility, which would lead us back to the church of Rome.

5. *Journal of the House of Delegates of Virginia*
1776. [Memorial of the Clergy of the
25 Established Church of Virginia, November
8, 1776.]

Page 47.

A memorial of a considerable number of the clergy of the established church of *Virginia* was pre-

Source Problems in United States History

sented to the House, and read; setting forth, that having understood various petitions have been presented to the Assembly, praying the abolition of the established church in this State, wish to represent,
5 that when they undertook the charge of parishes in *Virginia*, they depended on the publick faith for the receiving that recompense for their services, during life, or good behaviour, which the laws of the land promised, a tenure which to them appears of
10 the same sacred nature as that by which every man in the State holds, and has secured to him, his private property, and that such of them as are not yet provided for, entered into holy orders expecting to receive the several emoluments which such religious
15 establishment offered; that from the nature of their education they are precluded from gaining a tolerable subsistence in any other way of life, and that therefore they think it would be inconsistent with justice either to deprive the present incumbents
20 of parishes of any right or profits they hold or enjoy, or to cut off from such as are now in orders and unbeneficed, those expectations which originated from the laws of the land, and which have been the means of disqualifying them for any other profession
25 or way of life; also, that though they are far from favouring encroachments on the religious rights of any sect or denomination of men, yet they conceive that a religious establishment in a State is conducive to its peace and happiness, they think the opinions

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of mankind have a very considerable influence over their practice, and that it therefore cannot be improper for the legislative body of a State to consider how such opinions as are most consonant to reason, and of the best efficacy in human affairs, may be propagated and supported; that they are of opinion the doctrines of Christianity have a greater tendency to produce virtue amongst men than any human laws or institutions, and that these can be best taught and preserved in their purity in an established church, which gives encouragement to men to study and acquire a competent knowledge of the scriptures; and they think that, if these great purposes can be answered by a religious establishment, the hardships which such a regulation might impose on individuals, or even bodies of men, ought not to be considered; also, that whilst they are fully persuaded of the good effects of religious establishments in general, they are more particularly convinced of the excellency of the religious establishment which has hitherto subsisted in this State; that they ground their conviction on the experience of 150 years, during which period order and internal tranquillity, true piety and virtue, have more prevailed than in most other parts of the world, and on the mild and tolerating spirit of the church established, which with all Christian charity and benevolence has regarded dissenters of every denomination, and has shown no disposition to restrain them in the exercise

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of their religion; that it appears to them that the mildness of the church establishment has heretofore been acknowledged by those very dissenters who now aim at its ruin, many of whom emigrated from
5 other countries to settle in this, from motives, as they reasonably suppose, of interest and happiness; that they apprehend many bad consequences from abolishing the church establishment; that they cannot suppose, should all denominations of Christians
10 be placed upon a level, that this equality will continue, or that no attempt will be made by any sect for the superiority, and that they foresee much confusion, probably civil commotions, will attend the contest; that they also dread the ascendancy of
15 that religion which permits its professors to threaten destruction to the Commonwealth, in order to serve their own private ends; that though the justice and expediency of continuing the church establishment is a matter of which they themselves have no doubt,
20 yet they wish that the final determination of this House be deferred till the general sentiments of the good people of this Commonwealth can be collected, as they have the best reasons to believe that a majority of them desire to see the church establishment
25 continued; and that, as the sentiments of the people have been attended to in other instances, they submit to the consideration of the House, whether some regard should not be paid to their sentiments in a matter which so nearly concerns them as that of religion.

Religious Toleration and Freedom in Virginia

6. *Writings of Thomas Jefferson*, edited by P. L. Ford. Vol. I. [Comment of Jefferson on the Progress of Religious Liberty in Virginia, 1776-1779.]

5 Pages 53-54.

... This unrighteous compulsion to maintain teachers of what they [the dissenters] deemed religious errors was grievously felt during the regal government, and without a hope of relief. But the first republican legislature, which met in 76. was crowded with petitions to abolish this spiritual tyranny. These brought on the severest contest in which I have ever been engaged. Our great opponents were Mr. Pendleton & Robert Carter Nicholas, honest men,
15 but zealous churchmen. The petitions were referred to the commee of the whole house on the state of the country;¹ and, after desperate contests in that committee, almost daily from the 11th of Octob. to the 5th of December, we prevailed so
20 far only as to repeal the laws which rendered criminal the maintenance of any religious opinions, the forbearance of repairing to the church, or the exercise of any mode of worship: and further, to exempt dissenters from contributions to the support of the
25 established church; and to suspend, only until the next session levies on the members of that church for the salaries of their own incumbents. For al-

An error. The petitions were referred to the "Committee on Religion."

Source Problems in United States History

though the majority of our citizens were dissenters, as has been observed, a majority of the legislature were churchmen. Among these however were some reasonable and liberal men, who enabled us, on some
5 points, to obtain feeble majorities. But our opponents carried, in the general resolutions of the committee Nov. 19. a declaration that religious assemblies ought to be regulated, and that provision ought to be made for continuing the succession of the clergy,
10 and superintending their conduct. And in the bill¹ now passed was inserted an express reservation of the question Whether a general assessment should not be established by law, on every one, to the support of the pastor of his choice; or whether all
15 should be left to voluntary contributions; and on this question, debated at every session from 76 to 79 (some of our dissenting allies, having now secured their particular object, going over to the advocates of a general assessment,) we could only
20 obtain a suspension from session to session until 79. when the question against a general assessment was finally carried, and the establishment of the Anglican church entirely put down.

7. *Journal of the House of Delegates, 1777.* [Petitions of Inhabitants of Caroline County, December 5, 1777.]
25

Page 57.

Several petitions of sundry inhabitants of the

¹ Act of December 5, 1776.

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county of Caroline, whose names are thereunto subscribed, was presented to the House, and read; setting forth, that they have seen an act of the last session of the Assembly, by which dissenters from
5 the church of England are exempted from all levies for the support of the said church and its ministers, and highly approve thereof, as founded on principles of justice and propriety, and favorable to religious liberty; that, at the same time, they beg leave to
10 suggest, that, as, in their opinion, public worship is a duty we owe to the Creator and preserver of mankind, and productive of effects the most beneficial to society, it ought to be enjoined and regulated by the legislature, so as to preserve public peace, order,
15 and decency, without prescribing a mode or form of worship to any; that in such regulations an expense must unavoidably be incurred, not only for the building and repairing of places of worship, but also for the support of religious teachers or ministers,
20 that they may be freed from the cares of providing for their own and their families' subsistence, and attend more constantly and diligently to the cure of souls, which expense they conceive ought to be defrayed by an equal contribution of all men, in proportion to their circumstances, or according to the
25 degree in which they possess that species of property on which the legislature shall think fit to levy their taxes for public uses; but that equality can never be preserved if men are left to their volun-

Source Problems in United States History

tary donations; since, while the liberal exceed their proportion, the avaricious and miserly will fall short of theirs, or, perhaps, withhold all contribution; and that at the same time, the mode of making and
5 collecting such subscriptions, will probably be the source of much contention and ill will between the minister and his congregation, which circumstance, with the very precarious nature of the provision, must necessarily discourage men of genius and
10 learning from engaging in the ministerial office, and bring that order into contempt, and perhaps, in the end, religion itself:

That upon these, and many other considerations, they are of opinion, that it will be most proper to
15 fix on all tithables the payment of one certain annual sum, which may be judged adequate to the decent support of a minister of the gospel, and providing places of worship, leaving it to the payer, at the time of giving in his list of tithables, to direct the
20 appropriation of his quota to the use of that church, and its ministers, under such regulations as may be thought best.

8. *Separation of Church and State in Virginia*, by
H. J. Eckenrode. [Petition of Sundry In-
25 habitants of the County of Essex, October 22,
1779.]

Pages 57-58.

. . . The great confusion and disorder that hath arisen, and likely to continue in this Country on

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Account of Religion, since the Old Establishment has been interrupted, convinces us of the great and absolute necessity there is for the Legislative Body of this State, to take it under their most serious consideration. . . . A general assessment for the support of Religious Worship, wou'd be most agreeable to your Petitioners, that all Licentious and Itinerant Preachers be forbid collecting or Assembling of Negroes and others at unseasonable times. That every Minister of every Christian Denomination have his stated place of Worship. That no Insults, or interruptions be suffered to any Christian Congregation Assembled at proper times for Worship. That no doctrine be permitted to be preached, which may tend to subvert Government or disturb Civil Society. That there be a general Election of Vestry Men in every Parish, and that they may have power to assess or levy upon the Tythables of their respective Parishes, what they may think reasonable for the support of the Ministers of every Denomination and to be paid to any profession that the occupiers of such Tythes may think proper.

9. *Separation of Church and State in Virginia, etc.*
[Petition from Amelia County, November 8, 1784.]

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! . . [Declaring] that your Petitioners have with much concern observed a general Declension of Religion

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for a number of Years past, occasioned in Part, we conceive by the late War, but chiefly by its not being duly aided and patronized by the civil Power; that should it decline with nearly the same rapidity
5 in Future, your Petitioners apprehend Consequences dangerous, if not fatal to the Strength and Stability of Civil Government. . . . Were all Sense of Religion rooted out of the Minds of Men, scarce any thing would be left on which human Laws would
10 take hold. . . . Your Petitioners therefore think that those who legislate, not only have a Right, founded upon the principle of public utility, but as they wish to promote the Virtue and Happiness of their Constituents & the good People of the State in general; as
15 they wish well to the Strength and Stability of Government, they ought to aid & patronize Religion. . . . As every Man in the State partakes of the Blessings of Peace and Order . . . [so] every Man should contribute as well to the support of Religion, as that
20 of Civil Government; nor has he any Reason to complain of this, as an Encroachment upon his religious Liberty, if he is permitted to worship God according to the Dictates of his Conscience.

10. *Separation of Church and State in Virginia, etc.*
25 [Petition of Inhabitants of Rockingham County,
November 18, 1784.]

Pages 95-96.

To the Honourable the Speaker and house of Delegates now Sitting. The Petition of Sundry of

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the Inhabitants of Rockingham County—Sheweth
—That while we pay the greatest Deference to so
venerable a Body we may be permitted Submissively
to say it is our Humble Opinions that any Majestrait
5 or Legislative Body that takes upon themselves the
power of Governing Religion by human Laws As-
sumes a power that never was committed to them
by God nor can be by Man for the Confirmation of
which Opinion we shall Cite no less authority than
10 the Great Mr. Lock who says 'that the whole juris-
diction of the Majestrait reaches only to civil Con-
cernments and that all civil power Right and Do-
minion is bounded and confined to the only care
of promoting these things' which is so Pertinent
15 that we need not Expatiate on it Onely say that if
you can do any thing in Religion by human Laws
you can do every thing if you can this year take
five Dollars from me and give it to a Minister of
any Denomination you may next year by the same
20 Rule take Fifty or what not and give it to one of
another or to them of all other Denominations—
We think that where ever Religious Establishments
hath taken place it hath been attended with Per-
nicious Consequences for Instance we shall go no
25 further than New England for no sooner was their
Religion Established their Ministers ample pro-
vided for than Fining Imprisoning Whipping Ban-
ishing, &c: Ensued part of which oppressions Con-
tinued untill as late as the year 1773 when Several

Source Problems in United States History

Men were Imprisoned for Ministerial Tax about which time Sundry of their Ministers who had an opportunity to see the Consequence of such laws and practices appeared against them said (*sic*) to Connecticut Legislators. The Affairs of the State are the proper province of civil Rulers as to the Church of Christ be content to let it stand on its own proper Gospel foundation Regulated by its own Laws and Guarded by its own Sanctions—and tho' she may appear weak and Feeble and Ready to fall yet the Interposition of worldly power to Establish her and civil Policy to Defend her will only jostle her foundations and sink her the Lower: To which we would add that it is certain Christianity was first planted and was propogated through the World for three hundred years by truth and love without and often against the use of Secular force can then the power thereof be more plainly denied in any way than by saying (as some does) that it would soon fail if not supported by Tax and Compulsion. For a further proof (if necessary) of its not failing without such human Support—Consider the State of Rhood Island which proved an Asylum for the Distressed and Banished—The State of Pensilvania both of them hath been left intirely free in Religion even since their first planting one One hundred and forty the other one hundred years and the numerous Inhabitants in the Town of Boston hath enjoyed a like freedom these Ninety years last past. Now we

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would ask is Religion Lost in any of those places or whether there is not as much of it there as where thought to be well Guarded by human Laws we believe there is and that there are proofs enough to
5 Shew that this Liberty hath greatly Contributed to their Wellfare both Civil and Religious and sure we are that there hath not appeared any thing amongst them more Contrary to the Spirit of true Christianity than what is before Related. We beg
10 Leave to Remark the Inequality of such Tax for considering peoples diferent Situations it can be but forcing one Mans Money from him and giving it for the Advantage or supposed Advantage of another and in which it is Impossible for himself to Share
15 which is a Grievance we too long laboured under— Again we think it would Infringe upon what ought to be held most Sacred that is our Bill of Rights.

Now if as above the power of Civil Government relates onely to Mens Civil Interests If whereever it
20 hath been attended with pernicious Consequences If Christianity was first planted and propagated through the World for three Hundred years without and often against the Use of Secular force and that is plainly denying the power thereof to say it
25 would soon fail if not supported by Tax and Compulsion If leaving States Intirely free in Religion hath Contributed to their Wellfare both Civil and Religious If a General sess to support Ministers would be Inequal therefore a Grievance And if it would

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Infringe on our Bill of Rights We humbly Beg that your Honourable house would take it into your Serious Consideration and leave us (as we have the Greatest Expectation you will that is) Intirely
5 free in Religion or rather by a Law Establish us in the freedom we have Enjoy'd for some years past which Right the South Carolina Legislators (to their lasting Honor) hath confirm'd their Constituents in several years ago—As the original De-
10 sign of Vestrys is now Ceas'd we desire that our Vestry may be Dissolved and Overseers of the poor chosen in their Stead.

11. *Sketches of Virginia, etc.* [Memorial of the Convention of the Presbyterian Church,
15 August 13, 1785.]

Pages 342–343.

To the Honorable the General Assembly of the Commonwealth of Virginia:

The Ministers and Lay Representatives of the
20 Presbyterian Church in Virginia, assembled in Convention, beg leave to address you. . . . The ingrossed bill for establishing a provision for the teachers of the Christian religion and the act for incorporating the Protestant Episcopal Church,
25 so far as it secures to that church, the churches, glebes, &c., procured at the expense of the whole community, are not only evidences of this,¹ but of

¹ That is, of a disposition on the part of the state "to consider itself as possessed of supremacy in *spirituals*, as well as *temporals*."

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an impolitic partiality which we are sorry to have observed so long.

We therefore in the name of the Presbyterian Church in Virginia, beg leave to exercise our privilege as freemen in remonstrating against the former absolutely, and against the latter under the restrictions above expressed.

We oppose the Bill,

Because it is a departure from the proper line of
10 legislation;

Because it is unnecessary, and inadequate to its professed end—impolitic, in many respects—and a direct violation of the Declaration of Rights.

The end of civil government is security to the
15 temporal liberty and property of mankind, and to protect them in the free exercise of religion. Legislators are invested with powers from their constituents, for this purpose only; and their duty extends no farther. Religion is altogether personal, and the
20 right of exercising it unalienable; and it is not, cannot, and ought not to be, resigned to the will of the society at large; and much less to the Legislature, which derives its authority wholly from the consent of the people, and is limited by the original
25 intention of civil associations.

We never resigned to the control of government, our right of determining for ourselves, in this important article; and acting agreeably to the convictions of reason and conscience, in discharging our

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duty to our Creator. And therefore, it would be an unwarrantable stretch of prerogative, in the Legislature, to make laws concerning it, except for protection. And it would be a fatal symptom of abject slavery
5 in us, were we to submit to the usurpation. . . .

We farther remonstrate against the bill as an impolitic measure:

It disgusts so large a proportion of the citizens, that it would weaken the influence of government
10 in other respects, and diffuse a spirit of opposition to the rightful exercise of constitutional authority, if enacted into a law:

It partially supposes the Quakers and Menomists to be more faithful in conducting the religious interests of their societies, than the other sects—which
15 we apprehend to be contrary to fact:

It unjustly subjects men who may be good citizens, but who have not embraced our common faith, to the hardship of supporting a system, they
20 have not as yet believed the truth of; and deprives them of their property, for what they do not suppose to be of importance to them.

It establishes a precedent for further encroachments, by making the Legislature judges of religious
25 truth. If the Assembly have a right to determine the preference between Christianity, and the other systems of religion that prevail in the world, they may also, at a convenient time, give a preference to some favoured sect among Christians:

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It discourages the population of our country by alarming those who may have been oppressed by religious establishments in other countries, with fears of the same in this: and by exciting our own
5 citizens to immigrate to other lands of greater freedom:

It revives the principle which our ancestors contested to blood, of attempting to reduce all religions to one standard by the force of civil authority:

10 And it naturally opens a door for contention among citizens of different creeds, and different opinions respecting the extent of the powers of government.

12. *A History of the Rise and Progress of the Baptists in Virginia*, by R. B. Semple. [Resolutions
15 of Baptist General Committee, August 13, 1785.]

Page 71.

Resolved, That it be recommended to those coun-
20 ties, which have not yet prepared petitions to be presented to the general assembly, against the engrossed bill for a general assessment for the support of the teachers of the Christian religion, to proceed thereon as soon as possible: that it is be-
25 lieved to be repugnant to the spirit of the gospel, for the legislature thus to proceed in matters of religion: that no human laws ought to be established for this purpose; but that every person ought to be left entirely free in respect to matters of religion:

Source Problems in United States History

that the holy author of our religion, needs no such compulsive measures for the promotion of his cause: that the gospel wants not the feeble arm of man for its support: that it has made, and will again through divine power, make, its way against all opposition: and that, should the legislature assume the right of taxing the people for the support of the gospel, it will be destructive to religious liberty.

- 10 13. *The Writings of James Madison*, edited by Gaillard Hunt, Vol. II. [Memorial and Remonstrance against Religious Assessments. 1785.]
Pages 183-191.

15 *To the Honorable the General Assembly of the Commonwealth of Virginia. A Memorial and Remonstrance.*

We, the subscribers, citizens of the said Commonwealth, having taken into serious consideration, a Bill printed by order of the last Session of General
20 Assembly, entitled 'A Bill establishing a provision for Teachers of the Christian Religion,' and conceiving that the same, if finally armed with the sanctions of a law, will be a dangerous abuse of power, are bound as faithful members of a free
25 State, to remonstrate against it, and to declare the reasons by which we are determined. We remonstrate against the said Bill,

1. Because we hold it for a fundamental and unalienable truth, 'that religion, or the duty which

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we owe to our Creator and the Manner of discharging it, can be directed only by reason and conviction, not by force or violence.' ¹ The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right. It is unalienable; because the opinions of men, depending only on the evidence contemplated by their own minds, cannot follow the dictates of other men: It is unalienable also; because what is here a right towards men, is a duty towards the Creator. It is the duty of every man to render to the Creator such homage, and such only, as he believes to be acceptable to him. This duty is precedent, both in order of time and in degree of obligation, to the claims of Civil Society. Before any man can be considered as a member of Civil Society, he must be considered as a subject of the Governor of the Universe: And if a member of Civil Society, who enters into any subordinate Association, must always do it with a reservation of his duty to the general authority; much more must every man who becomes a member of any particular Civil Society, do it with a saving of his allegiance to the Universal Sovereign. We maintain therefore that in matters of Religion, no man's right is abridged by the institution of Civil Society, and that religion is wholly exempt from its

¹ Decl. Rights, Art. 16: [Note in the original].

Source Problems in United States History

cognizance. True it is, that no other rule exists, by which any question which may divide a Society, can be ultimately determined but by the will of the majority; but it is also true, that the majority
5 may trespass on the rights of the minority. . . .

4. Because the bill violates that equality which ought to be the basis of every law, and which is more indispensable, in proportion as the validity or expediency of any law is more liable to be im-
10 peached. If 'all men are by nature equally free and independent,'¹ all men are to be considered as entering into Society on equal conditions; as relinquishing no more, and therefore retaining no less,
15 are they to be considered as retaining an '*equal* title to the free exercise of religion according to the dictates of conscience.'² Whilst we assert ourselves a freedom to embrace, to profess and observe the Religion which we believe to be of divine origin, we
20 cannot deny an equal freedom to those whose minds have not yielded to the evidence which has convinced us. If this freedom be abused, it is an offence against God, not against man: To God, therefore, not to men, must an account of it be rendered. . . .

25 5. Because the bill implies either that the Civil Magistrate is a competent Judge of Religious truth; or that he may employ Religion as an engine of

¹ Decl. Rights, Art. 1: [Note in the original].

² Art. 16: [Note in the original].

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Civil policy. The first is an arrogant pretention falsified by the contradictory opinions of Rulers in all ages, and throughout the world: The second an unhallowed perversion of the means of salvation.

5 6. Because the Establishment proposed by the bill is not requisite for the support of the Christian Religion. To say that it is, is a contradiction to the Christian Religion itself; for every page of it disavows a dependence on the powers of this world: it is
10 a contradiction to fact; for it is known that this Religion both existed and flourished, not only without the support of human laws, but in spite of every opposition from them; and not only during the period of miraculous aid, but long after it had been
15 left to its own evidence and the ordinary care of Providence: Nay, it is a contradiction in terms; for a Religion not invented by human policy, must have pre-existed and been supported before it was established by human policy. It is moreover to weaken
20 in those who profess this Religion a pious confidence in its innate excellence, and the patronage of its Author; and to foster in those who still reject it, a suspicion that its friends are too conscious of its fallacies, to trust it to its own merits.

25 7. Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of Religion, have had a contrary operation. During almost fifteen centuries, has the legal establishment of Christianity been on trial. What

Source Problems in United States History

have been its fruits? More or less in all places, pride and indolence in the Clergy; ignorance and servility in the laity; in both, superstition, bigotry and persecution. Enquire of the Teachers of Christianity for the ages in which it appeared in its greatest lustre; those of every sect, point to the ages prior to its incorporation with Civil policy. Propose a restoration of this primitive state in which its Teachers depended on the voluntary rewards of their flocks; many of them predict its downfall. On which side ought their testimony to have greatest weight, when for or when against their interest?

8. Because the establishment in question is not necessary for the support of Civil Government. If it be urged as necessary for the support of Civil Government only as it is a means of supporting Religion, and it be not necessary for the latter purpose, it cannot be necessary for the former. If Religion be not within [the] cognizance of Civil Government, how can its legal establishment be said to be necessary to civil Government? What influence, in fact, have ecclesiastical establishments had on Civil Society? In some instances they have been seen to exact a spiritual tyranny on the ruins of Civil authority; in many instances have they been seen upholding the thrones of political tyranny; in no instance have they been the guardians of the liberties of the people. Rulers who wished to subvert the public liberty, may have found an estab-

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lished clergy convenient auxiliaries. A just government, instituted to secure & perpetuate it, needs them not. Such a government will be best supported by protecting every citizen in the enjoyment of his
5 Religion with the same equal hand which protects his person and his property; by neither invading the equal rights of any Sect, nor suffering any Sect to invade those of another.

9. Because the proposed establishment is a departure from that generous policy, which, offering
10 an asylum to the persecuted and oppressed of every Nation and Religion, promised a lustre to our country, and an accession to the number of its citizens. What a melancholy mark is the Bill of sudden
15 degeneracy? Instead of holding forth an asylum to the persecuted, it is itself a signal of persecution. It degrades from the equal rank of Citizens all those whose opinions in Religion do not bend to those of the Legislative authority. Distant as it may be, in
20 its present form, from the Inquisition it differs from it only in degree. The one is the first step, the other the last in the career of intolerance. The magnanimous sufferer under this cruel scourge in foreign Regions, must view the Bill as a Beacon
25 on our Coast, warning him to seek some other haven, where liberty and philanthropy in their due extent may offer a more certain repose from his troubles. . . .

12. Because, the policy of the bill is adverse to

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the diffusion of the light of Christianity. The first wish of those who ought to enjoy this precious gift, ought to be that it may be imparted to the whole race of mankind. Compare the number of those who have as yet received it with the number still remaining under the dominion of false Religions; and how small is the former! Does the policy of the bill tend to lessen the disproportion? No; it at once discourages those who are strangers to the light of [revelation] from coming into the Region of it; and countenances, by example the nations who continue in darkness, in shutting out those who might convey it to them. Instead of leveling as far as possible, every obstacle to the victorious progress of truth, the Bill with an ignoble and unchristian timidity would circumscribe it, with a wall of defence against the encroachments of error. . . .

15. Because, finally, 'the equal right of every citizen to the free exercise of his religion according to the dictates of conscience,' is held by the same tenure with all our other rights. If we recur to its origin, it is equally the gift of nature; if we weigh its importance, it cannot be less dear to us; if we consult the Declaration of those rights which pertain to the good people of Virginia, as the 'basis and foundation of government,'¹ it is enumerated with equal solemnity, or rather with studied emphasis. Either then, we must say, that the will of the Legis-

¹ Decl. Rights-title: [Note in the original].

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lature is the only measure of their authority; and that in the plenitude of this authority, they may sweep away all our fundamental rights; or that they are bound to leave this particular right untouched
5 and sacred: Either we must say that they may controul the freedom of the press, may abolish the trial by jury, may swallow up the Executive and Judiciary Powers of the State; nay that they may despoil us of our very right of suffrage, and erect them-
10 selves into an independent and hereditary assembly: or we must say, that they have no authority to enact into a law the Bill under consideration. We the subscribers say, that the General Assembly of this Commonwealth have no such authority: And that no
15 effort may be omitted on our part against so dangerous a usurpation, we oppose to it, this remonstrance; earnestly praying, as we are in duty bound, that the Supreme Lawgiver of the Universe, by illuminating those to whom it is addressed, may on
20 one hand, turn their councils from every act which would affront his holy prerogative, or violate the trust committed to them: and on the other, guide them into every measure which may be worthy of his [blessing, may re]dound to their own praise,
25 and may establish more firmly the liberties, the prosperity, and the Happiness of this Commonwealth.

14. *Statutes of Virginia, etc.* Vol. XII. [Section two of the Act for Establishing Religious Freedom, December 17, 1785.]

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Be it enacted by the General Assembly, That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinion in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.

PROBLEM V

V.—Relation of Eastern States to the Development of the West, 1785-1832

Relation of Eastern States to the Development of the West, 1785-1832

I. THE HISTORICAL SETTING OF THE PROBLEM

THE early history of that portion of the United States known as the West is concerned principally with the acquisition of the territory beyond the Alleghanies, the process of distributing the land to the people and the formation of new states and their relation to the nation. The problems here set forth are related to the second and third topics mentioned. They were real problems because of the conflicting ideals and forces which were the chief factors in determining the processes mentioned.

Fundamentally this period of the development of the West was a part of that perennial struggle with which we are so familiar—the struggle between aristocracy and democracy, conservatism and liberalism, rich and poor, the rights of property and the rights of men, capital and labor, etc. This struggle for power, wealth, glory or prestige of any kind, by individuals, groups, classes, sections or nations, means inevitably that some will try to gain at the expense of others, and in the process the liberties of the many are often sacrificed for the interest of the few. In that important and unique phase of American history known as the “Westward Movement” we have good illustrations of these contending forces, and in the arguments set forth by the partisans of the various plans

Source Problems in United States History

for the solution of the western problem, the student has the opportunity of discovering how facts were distorted to suit the convenience of the party seeking particular ends, how the interests of individuals, groups and sections were emphasized for purely selfish purposes, and how there were honest differences of opinion with respect to those policies which would be best for the nation as a whole. He will also appreciate the difficulty of the historian in estimating the significance of historical facts and forces, and discover that the history of the West, as well as other sections of the country, is concealed in documents that exhibit false assertions, unwarranted or conflicting interpretations, opposing policies, each claimed by their authors as the most desirable, and particularly illustrations of the struggle between liberal and conservative forces in their relation to the development of the West.

Before the American revolution the struggle for the possession of the Mississippi Valley had occupied the attention of three nations—England, France, and Spain. It resulted, in 1763, in the elimination of France and the division of the territory between England and Spain, with the Mississippi River as a boundary, but with its free navigation in doubt owing to Spain's possession of New Orleans and the control of the mouth of the river. During the first few years of the Revolutionary War, some of the members of Congress had serious doubts as to whether it was desirable to acquire the territory from the Alleghanies to the Mississippi River, or to insist on the free navigation of the same in case the territory were acquired. In the great stress of the war, 1779, some of the members believed that it was desirable to sacrifice the free navigation of the Mississippi, at least temporarily, in order to gain the support of Spain against England. Some believed that it was desirable to have Spain in possession of the river because it would

Relation of Eastern States to the West

bind the western settlers to the East and make it easier to control them.

We have evidence of still deeper reasons for the hostility of some of the members of Congress to the development of the West. Gerard, the French ambassador to the United States, wrote Vergennes, August 12, 1778, that the dominant spirit of Congress was one of individual self-interest. The states north of Maryland had little interest in the West at this date. New England and New York were interested in expansion to the Northeast. There was fear that the acquisition of the Southwest, in particular, would strengthen the South. Gouverneur Morris, for example, declared that on no condition was he willing to strengthen this section.¹ There was also the natural antipathy which might be expected from states having a desire for commercial expansion towards the formation of large agricultural states in the West. Although early opposition to the acquisition of the western territory was overcome, we have in these differences of opinion a clew to the understanding of the later relations of the eastern states to the West, so far as it depended on the legislation of Congress for its development.

After the treaty of peace of 1783 settled the question of the acquisition of western territory and, in theory at least, the free navigation of the Mississippi River, the North Atlantic States seemed willing to sacrifice, for a period of twenty-five or thirty years, the free navigation of the Mississippi, in return for a treaty with Spain giving commercial advantages to the East. The famous treaty negotiated by John Jay and Gardoqui, minister to the United States from Spain, was presented to Congress in the summer of 1786. Important votes and motions on the acceptance of this treaty and the question of the

¹ See document 18 below; and also document 6 in which Grayson expresses the opinion that this was the view of the North as a whole.

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free navigation of the Mississippi for the next two years, show that the representatives of the seven North Atlantic States (Delaware not represented) usually voted together against measures favorable to the West on this subject, while those from the southern states voted in favor of the West.

When the states having claims to the western lands ceded the same to the national government, and the vital problem arose respecting the methods of distributing and settling this territory, the votes in Congress appear to show that the representatives of the North Atlantic States were hostile to the rapid development of the West. They were accused of making it difficult and costly for the average settler to acquire legal title to the better lands, through purposeful delays in extinguishing the titles of the Indians to western lands, through slow surveys, infrequent sales and refusal to sell land in small tracts. It was asserted that they were hostile to pre-emption rights, reduction in the price of the refuse or unsold lands, even after they had been on the market for many years, and to a cession of the public lands to the states in which they were located; and finally that they wished to have large tracts of public land in western states ceded to eastern states, and especially to have the proceeds of the sales of public lands distributed to all the states for the purpose of education and internal improvements, on the basis of their proportionate representation in the House of Representatives. How far was this asserted attitude due to purely sectional motives, *viz.*, a fear on the part of the North Atlantic States of the growth of the power of the West, and particularly of a union of the South and West against the Northeastern States; and how far was it due to an honest difference of opinion respecting the best methods of distributing the public lands, and the policy to be pursued with respect to that

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relation of the western states to the nation, which would be best for the country as a whole? The documents may often be interpreted to prove either of the above views. To discover the real motives behind the vote of an individual, or of a group representing a section of the country, is often a difficult problem; but the effort must be made in order to appreciate and understand the nature of the problems involved in the relation of the eastern states to the West in the period under consideration.

In defense of the apparent tendency of the representatives of North Atlantic States to vote against the interests of the West note the following. The country started with a heavy debt, and revenue had to be obtained either from taxes or from the sale of public lands. The latter seemed more desirable to many, even though this policy made it necessary to keep up the price of the public lands. Again, a rapid settlement of the West would spread the population over a wide area for only the better lands would be taken up. Large sparsely populated regions would make it difficult and expensive to protect settlers from the Indians, and would hinder the setting up of a government which would make life and property secure through a régime of law and order. Compactness of settlement had been a New England policy from the first, because only by such distribution of population could an orderly, progressive and safe settlement be made favorable to the rapid development of education and religion. Furthermore it was impossible to extinguish the Indian titles and make accurate surveys quickly enough to accommodate immediately all who might wish to emigrate to the West. But to concede these points would expose the settler to great danger and make his title to land uncertain and insecure. It was asserted that laws against squatting, or settling on unsurveyed land, were justified for the good of the settler

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himself. To grant pre-emption rights would simply encourage settlers to break the laws. Still again it was asserted that the original states had a valid claim to a share of the public lands and to a portion of the proceeds of the sales for the same purposes, *viz.*, education and internal improvement, for which Congress rather freely granted public lands to the new states, on the ground that the West was acquired solely by the blood and treasure of the eastern states.

Opinion in the West, and to a large extent in the South, was hostile to these views, not necessarily in each case for purely sectional reasons, but because of an honest difference of opinion respecting the best policy for the whole country. For example, it was held that revenue was far less important than opportunity for the poor man to better his economic condition. Therefore the price of land should be very low or even given away to settlers. It was held further that the settler should have the opportunity of locating the best lands, without waiting for the slow process of extinguishing Indian titles to the land and the making of accurate surveys. When the government caught up with the settler or squatter, he should be granted pre-emption rights, *viz.*, the opportunity to purchase one hundred and sixty acres surrounding his house and improvements, up to two weeks before the commencement of land sales in the district where he had located (proposition of 1820). Finally the best lands were soon taken up in any particular district where surveys had been made, so that it was considered unjust to force settlers to purchase poor lands or wait a considerable time for the survey of fresh lands. Since Congress refused to limit the sale of lands to actual settlers, eastern speculators were continually securing the best lands and holding them at high prices, thus hindering rapid settlement. Finally the rights of the new states to

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the title to the public lands within their boundaries were asserted, because only thus could they be on a complete equality with the original states, a right guaranteed them by the constitution. These opposing arguments, and others of a similar character, indicate how the documents may be open to more than one interpretation.

It is apparent also that the documents may be interpreted from a purely sectional standpoint. Note some of the reasons stated for opposition to the rapid development of the West. It would hinder the political and economic supremacy of the North Atlantic States. On the basis of a struggle for sectional advantage the North Atlantic States feared the rapid growth of the West, because this would endanger their control of Congress and their retention of the balance of power in the Senate and House. Retaining this power they could prevent or delay the formation of new states in the West and the acquisition of additional territory further west. Thus they could prevent what was feared above all else, a possible combination of the South and West against the North Atlantic States. From an economic standpoint, this section desired a high protective tariff, and a large labor supply with a low wage-scale. It wished to prevent a depreciation of its settled lands and to cause its unsettled lands, particularly those in Maine and New York, to be settled. It wished to create a large population devoted to both agriculture and manufactures, in order to provide home markets for manufactured goods and plentiful food supplies. A large population would secure a large representation in the House of Representatives, and thus a protective tariff and legislation favorable to commerce and trade would be secured, and probably also financial control of the country through the control of banking facilities. With respect to the development of the West, its desire was to keep complete control of the public lands in Congress for the

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purpose of using them in a manner to safeguard its political and economic interests. With respect to the South it wished to prevent the extension of the slavery system, and hence the acquisition of more western territory, and any reduction in the tariff, one of the greatest wishes of the South.

These desires, both political and economic, could be secured by preventing or seriously delaying the settlement of the western lands by the methods already indicated. The effect of all these measures would certainly prevent or greatly delay emigration to the West from the North Atlantic States. In consequence the population of the latter section would increase rapidly and all the political and economic desires mentioned would be assured. It will be noted that great emphasis was laid by the western representatives on the efforts of the North Atlantic States to prevent emigration to the West.

Whether this policy was consciously carried out by the political leaders of this section or not, it is a fact that up to 1835 only three states were admitted to the Union from the original Northwest Territory (Ohio, Indiana, and Illinois), and only two from the Louisiana purchase (Louisiana and Missouri)—five states in all from the West proper¹ from 1796 to 1835. No state was admitted from 1820 to 1836. This situation was made possible, in part by delaying settlement, in part by spreading the western population over a large area of territory, and in part by requiring a relatively large population, about sixty thousand, before allowing a territory to be formed into a state. This explains in part the success of the North Atlantic Section on two great issues up to 1830, the tariff and the public lands. It retained political control

¹ Mississippi and Alabama, admitted in 1817 and 1819 respectively, had most of the characteristics of the West and favored the policies of this section, but on the important question of the tariff voted with the South.

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in spite of the combination of the South and West¹ against it. Of course the political leaders of this section could not actually prevent emigration to the West, for there were many counterforces. Washington, Madison, Adams, Benton, and even Webster, all called attention to the lack of harmony between some of the political leaders of this section and the people at large. There were certain factors that forced emigration to the West, such as the attractive power of rich, comparatively cheap lands, the determination of some to emigrate and take up land as squatters regardless of the laws, the temptation to speculate in the public lands, the pressure of population, and, after 1820, the development of easy means of communication through the steamboat and canals (Erie Canal, 1825),—in short, the opportunity for economic betterment for the average man. In addition, the fact that the West was an outlet for the discontented and dissatisfied among all classes, especially for the laboring classes—the foundation of the growing industrial democracy of the Northeast—gave further emphasis to the observation of Washington in 1785, “As to restraining the citizens of the Atlantic States from transplanting themselves to that soil [West], when prompted by interest or inclination, you might as well attempt, while our governments are free, to prevent the reflux of the tide when you had got it into your rivers.”

The South for the most part supported the demands

¹The Northeast received the support of Ohio, Indiana, Illinois, and even of Kentucky, on the tariff of 1824 and 1828, and to some extent was aided by Ohio and Kentucky on questions relating to the public lands. Compare document 38 below. The tendency of the new states, formed from the Northwest Territory, to support the Northeast was due to the increase, after 1815, of emigrants from the latter section, the development of northern markets through better transportation (Erie Canal, 1825), the growth of nationalism, and belief in Clay's “American System.”

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of the West on the question of the public lands. She favored the squatter—his method of settlement, and his demand for pre-emption. The South was interested in the extension of the slavery system and a low tariff, and hence desired the acquisition of additional western territory. She wished to decrease the political power of the North Atlantic States, and the influence of the manufacturing and trading interests; hence her anxiety to strengthen agricultural interests by the admission of new states in the West and Southwest. It is this play of sectional interests that one must note with care, for it was the interplay of these special interests of the North, South, and West which governed the legislation of Congress respecting the distribution of the public lands and the relation of the western states to the nation. Senator Hayne declared that the country was divided into two parties, one of which believed that the West had been fairly and liberally treated and the other "embracing the entire West" quite to the contrary. The student should note how far the documents give evidence of the one or the other contention.

It was in the period 1825-1830 that the question of the public lands reached a crisis. There was great dissatisfaction in the West because of the failure of Congress to reduce the price of the refuse or unsold lands [documents 24-26]. Senator Benton proposed a reduction in the price of lands each year for four years until the price became twenty-five cents per acre. After lands were offered at fifty cents per acre without sale, they were to be donated to actual settlers. After they were offered at twenty-five cents per acre, if not sold within one year, they were to be ceded to the states in which they were located. The bill was brought to a vote in April, 1828, and was defeated in the Senate 25 to 21. Every senator from the North Atlantic States voted

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against the measure excepting one from Delaware. A second method of obtaining relief was the movement in progress in 1828-9, under the leadership of Governor Edwards of Illinois, to induce Congress to cede the title of all the public lands to the states in which they were located. The Louisiana and Indiana legislatures passed resolutions to this effect December 22, 1828, and January 9, 1829, respectively. If this plan had succeeded many of the problems of the West with respect to price, rapid settlement, growth of political power, etc., would have been solved.

Contemporary with these efforts, 1824-1829, the North Atlantic States were maneuvering to secure a distribution of the proceeds of the sale of the public lands among all the states according to their ratio of representation in the House [documents 27-30]. John Quincy Adams records in his diary a conversation with Henry Clay, December 31, 1828, in which the latter "spoke to me with great concern of the prospects of the country—the threats of disunion from the South, and the graspings after all the public lands, which are disclosing themselves in the Western States." It was to checkmate such efforts, in part, that Mr. Hunt, of Vermont, introduced a resolution in the House of Representatives, December 17, 1829, on the expediency of distributing the annual proceeds of the sales of the public lands to all the states for the purpose of education and internal improvements according to their proportionate representation in the House of Representatives. Thus the larger share of the proceeds of the sales would fall to the North Atlantic States, and money would be diverted from the national treasury so that the debt would be kept up and hence an excuse provided for a high tariff to provide revenue to pay off the debt. The South was opposed to this measure because it would interfere with a reduction of the tariff. The West thought

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that it was a plan on the part of the North Atlantic States to use the public lands in a way to serve eastern economic interests; that it would interfere with pre-emption, a reduction in the price of the public lands, and their cession to the states in which they were located, and other plans which would lead to a rapid settlement of the West.

On December 29, 1829, Senator Foot of Connecticut introduced his famous resolution on the desirability of limiting the sale of public lands to those already on the market. These incidents taken in connection with the passage of a high protective tariff bill in May, 1828, so obnoxious to the South, paved the way for a more active alliance of the South and West against the North Atlantic States. Senator Benton of Missouri made a vigorous attack on the Foot Resolution, and insisted it was an effort to check emigration to the West and strengthen the tariff and manufacturing interests by keeping a large labor supply in the eastern states. Senator Hayne of South Carolina continued the attack, and urged the alliance of the South and West to gain their respective ends—*viz.*, a low tariff for the South and control of the public lands by the states in which they were located for the West. [Emigration question, documents 31-38.]

Webster's speech was an attempt to convince the West that the Northeast, and particularly New England, had always been friendly to the West, while the South had been opposed. The object was to break up the alliance of these two sections, and at the same time to offer an alliance of the Northeast and West on the basis of internal improvements for the latter. Webster feared that the alliance of the South and West would endanger the protective tariff. Much of his speech was devoted to an attack on the South on the question of National vs. State Rights, because he hoped to win the West on this issue of Nationalism. Benton

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declared that this was a move to divert attention from the main issue. His attack on the South was a "cannonade, to divert the attention of the assailants, his concluding motion for indefinite postponement, a signal of retreat and dispersion to his entangled friends." This debate ended the first chapter, so to speak, of the struggle, though many more battles were yet to be fought before the question of the public lands was finally settled. [Northeast or South favorable to the West, documents 39-43.]

II. INTRODUCTIONS TO THE SOURCES

1. *The Writings of James Monroe*, edited by Stanislaus Murray Hamilton, Vol. I. (New York, 1898.)

The letter given was strictly contemporary and Monroe seems to be sure of his statements, though he gives evidence in other speeches of being very distrustful of the northern states.

2. *Debates and Other Proceedings of the Convention of Virginia*, by David Robertson. (Second edition, Richmond, 1805.)

This is the collection of debates, first published in 1788, taken in shorthand by David Robertson. He says, in his preface, that they "were taken down in shorthand, as fully and accurately as an ineligible seat, and other disadvantageous circumstances permitted the stenographer to take them." He adds that he was "governed by the most sacred regard to strict justice and impartiality in taking and transcribing them," but that in some, he hopes few instances these difficulties may "have occasioned a misconception of the meaning of the speakers." The first edition he admits was inaccurate and says that "it was republished without the aid of a *proof-sheet*." In the second edition he says that it was in part revised

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and corrected, "by the same stenographer who took them down . . . by reference to part of the original stenographical manuscript [though] . . . part of it has been destroyed." He also says that his revision might have been perfect if he could "have had some communication with the speakers on some points. As he could not communicate with *all*, he declined, for obvious reasons to communicate with *any*." This is the material which Jonathan Elliot incorporated in his well-known edition of the debates in the various state conventions on the ratification of the constitution.

On June 13, 1788, Patrick Henry requested that those members of the Virginia convention who had been members of Congress communicate to the convention "the transactions of congress relative to the navigation" of the Mississippi. Accordingly Madison, Grayson and Monroe, and others, all gave their versions of what took place. Madison declared "That he had his information from his own knowledge, and from a perusal of the documents and papers which related to those transactions." Grayson and Monroe apparently spoke from memory. Madison was extremely anxious for the adoption of the constitution, and, though he was from Virginia, he defended the attitude of the northern states. Grayson and Monroe were distrustful of the North in all their speeches. Grayson had been chairman of the committee that formed the land ordinance of 1785, and in this transaction, as well as in that of the Mississippi, he was sure that the North was working for its own interests only.

3. *Register of Debates in Congress*. (Washington, 1825-1837.)

The debates of Congress purport to give speeches, motions, etc., before this body. They are not always verbatim reports. Speeches are condensed, summarized

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and, as in the case of Benton's, several speeches delivered on different dates are brought together to form one connected speech.

4. *History of the Formation of the Constitution of the United States of America*, by George Bancroft. Vol. I, Appendix. (New York, 1882.)

The appendix of this volume contains letters and papers illustrating the formation of the federal constitution. This extract is from a long and interesting letter of Grayson's, who was chairman of the committee to draft an ordinance for the sale of the western lands. This letter gives the arguments offered by members of the committee for the adoption of the New England or the southern system of land distribution. Washington's letter, from which an extract is given, states his views on the subject.

5. *The Records of the Federal Convention of 1787*, edited by Max Farrand. (New Haven, 1911.)

This is the latest and most complete edition of the various records of the convention which formed the constitution. The speeches given were recorded by Madison during the convention, but only as to their substance. He says that as a rule he wrote them out from his daily notes "during the session or within a few finishing days after its close." Many years after, in 1819, for example, he went over his notes and made additions. In the documents given, the portions included in < > in Gerry's speech were added by Madison from the journal of the convention published in 1819.

6. *Documents relating to New-England Federalism, 1800-1815*, edited by Henry Adams. (Boston, 1877.)

This volume contains many letters of New England federalists, among them several of Timothy Pickering's. He was a violent partisan and strong for the interests of New England.

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7. *Writings of John Quincy Adams*, edited by Worthington Chauncey Ford, Vol. IV. (New York, 1914.)

The writings of Adams need no special comment. The letter given is dated at St. Petersburg. Perhaps the fact that Adams was so far away is one reason why he could look on the history of New England from a different standpoint than if he had commented on this question in his native land.

8. *American State Papers. Documents of the Congress of the United States in relation to The Public Lands*, Vols. IV, VI. (Washington, 1859, 1860.)

This is a reprint of a great variety of documents, originally printed in the congressional series. They consist of reports of committees to Congress, resolutions of state legislatures, petitions from individuals, communications from cabinet members, etc.

9. *Memoirs of John Quincy Adams, comprising portions of His Diary From 1795 to 1848*, edited by Charles Francis Adams, Vol. IX. (Philadelphia, 1876.)

This is a diary, kept daily, and with criticisms on various public measures and men. It, of course, gives the personal opinion of Adams and exhibits more or less prejudice. The extract given should be compared with the letter from his writings.

10. *Reports of the Secretary of the Treasury of the United States*, Vol. II. (Washington, 1837.)

This series gives the official communications of the secretaries of the Treasury.

III. QUESTIONS AND SUGGESTIONS FOR STUDY

A. The Jay Treaty and the Free Navigation of the Mississippi River [Documents 1 to 10]

1. Do you agree with Monroe that the Jay treaty "in reality gains us nothing"? Supposing the five points men-

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tioned were acknowledged to be real gains, would the sacrifice of the free navigation of the Mississippi for the period stated be justified? Why?

2. Is there evidence in the treaty and Monroe's letter that sectionalism between the North and South and the Northeast and West was developing? Are his statements open to any other interpretation?
3. Name the seven and five states respectively which voted on opposite sides of the question. How do you account for this division?
4. State the seven points given in Monroe's P. S. explaining the object of Jay and his followers "in the occlusion of the Mississippi." What other interpretation of Jay's conduct does Monroe give? Which of the two do you favor? Why?
5. If the most desirable end was to preserve and strengthen the Union, how might the treaty be defended as one likely to be helpful in this respect?
6. What prejudices might Monroe and Grayson have had which would tend to make them attribute false motives to the northern representatives?
7. State the four arguments given by Grayson in favor of giving up the free navigation of the Mississippi for the period mentioned. What reply would a western man have probably made to each?
8. What was the significance of the vote of the seven northern states to repeal Jay's instructions? Did these states violate the clause in the articles of confederation which declares that nine states must concur in the formation of a treaty? If so how do you explain the vote?
9. Compare Grayson's notions of the attitude of the northern states toward the West with those of Monroe. What additional argument does Grayson give?
10. Is Grayson's explanation of the attitude of the northern states toward the free navigation of the Mississippi River during and after the war a satisfactory one?
11. Compare Madison's arguments respecting the attitude of the northern states toward the free navigation of the

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Mississippi and the West with those of Monroe and Grayson. What difference of opinion do you find? How do you account for the same?

12. What significance do you attach to Madison's phrases "people at large" and "particular citizens"? Where in the documents following are similar ideas expressed?
13. What additional reasons does Madison give to explain the attitude of the northern states in favor of Jay's treaty? Which seem to you to be valid and which invalid reasons?
14. Do you think the northern states were in favor of a "temporary" or a permanent cession of the free navigation of the Mississippi? Why?
15. What was Grayson's notion of the final effect of a "temporary cession" and its relation to emigration to the West? Is his reasoning sound?
16. What were Grayson's arguments in denial of Madison's assertions that emigration to the West would have the same effect on the "Eastern States" as emigration "from this country" [the South]? Do you agree? Why? What effect did he think emigration from the northern states to the West would have on the North and South, respectively?
17. Is Monroe correct in asserting that it was to the interest of the northern states to "depress the western country"? Why?
18. Can the five instances mentioned by Senator Benton, in which the North and South voted opposite on the Mississippi question, be explained in any other way than the explanations given by Monroe, Grayson, and Benton?
19. Is Mr. Holmes correct in his notion that Mr. Madison "put it all right" in showing the true connection of the East and West on the "concession"? Why?
20. Draw up a list of all the arguments given in favor of the acceptance of Jay's treaty. Make a similar list of those against it. Which of these arguments appear to be

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sectional in character and which seem to be for the good of the country as a whole?

21. Which are weakened by prejudice, bias or jealousy?
22. Do the documents prove to you that Jay and his followers wished to limit the growth of the West? Why?
23. Show how certain documents might be interpreted to the contrary.

B. Relation of Eastern States to the West, 1785-1815 [Documents 11 to 23]

1. State the six views mentioned by Grayson which certain members of the committee held with respect to the sale of the public lands, and explain each.
2. Was it desirable to prevent the lands in the original states from depreciating, and also prevent interference in the sale of lands "now at market in the individual states"?
3. Why did some fear the result if new states were added to the confederacy?
4. What is the significance of Washington's phrase "under the rose"?
5. Compare the six points mentioned by Grayson with the seven mentioned by Monroe in the P. S. of his letter to Henry. Which are essentially the same? Which emphasize political and which economic reasons?
6. Is the argument of Holmes a satisfactory answer to that of Benton respecting the motive for requiring each township to be sold out entire before the next was offered for sale? Why did Congress strike out this provision of the committee's report? Is there evidence of prejudice or sectional bias in the statements of Benton and Holmes?
7. How do you explain the vote on the motion to reduce the size of the tract to 320 acres? Was it to the real advantage of the West to have the land sold in tracts

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smaller than 640 acres? Why? Give reasons to the contrary.

8. Do you approve of the contention of Morris respecting property as a means of representation? Why?
9. What effect would it have had on representation in Congress 1789-1832 from the East and West, if property had been made equal with numbers in reckoning representation?
10. Should the rule of representation have been fixed so that the Atlantic States would have had "a prevalence in the national councils"? Why? Are the three arguments given by Morris valid? Why?
11. Would it have been just, for the reasons given, to fix "irrevocably" the number of representatives of the Atlantic States and each new state? Would it have been politic? Why?
12. What are Mason's arguments for the equality of the new western with the eastern states? What dangers does he point out from the inequality? Does he satisfactorily answer the arguments of Morris on the measure of representation?
13. Is the argument of Morris valid with respect to the ability of the West to furnish men "equally enlightened" to share in the administration? Why does he think that the "Back members are always most averse to the best measures"?
14. Why did Morris and Gerry think that the western people might ruin the Atlantic interests if they got the power? Do you agree with these reasons? Why?
15. Do the documents so far given show that the North or South was the chief aggressor in grasping for power? What is the opinion of Morris? How does he propose to remedy the situation?
16. What does Morris think would be the effect of an increase in the power of the South, on the West and North?
17. Compare Gerry's plan to safeguard the interests of the original states, with that of Morris. Which do you think would have worked best?

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18. State Mr. Sherman's argument for the equality of the new western with the original states. Do you approve of Gerry's argument in reply? Why?
19. What do you infer from the vote on Gerry's motion with respect to the attitude of the North and South toward the West?
20. Do the documents given from the debates in the Federal Convention give evidence of sectionalism North and South, and Northeast and West? How may they be interpreted to the contrary?
21. Why did Morris wish to govern Louisiana permanently as a province?
22. State Pickering's notions of the West. What does he mean by the phrase "we are maintaining their representatives in Congress for governing us, who surely can much better govern ourselves"?
23. State the views of John Quincy Adams on the effect of emigration from New England to the West. Do you agree with him? Compare his views with those of Madison, Mason, and Sherman.
24. Compare them with those of Monroe, Grayson, Benton, Morris, and Gerry. What is your own view of the effect that such emigration would have had on New England at the date in question?
25. How does Adams account for the loss of New England influence? What effect does he say it has had? Do you agree?
26. What distinction is made by Madison and Adams respecting the views held by political leaders and the people at large on emigration from New England?
27. How do you account for this distinction? Compare Benton's views on this point in the last document given in this problem.
28. Do the documents given prove to you that the political leaders of the North Atlantic States consciously tried to hinder the development of the West for sectional advantage?
29. What documents may be interpreted to the contrary?

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C. Questions on the Problem of the Public Lands, 1825-1832 [Documents 24-43]

1. What alleged effects were produced in the West by a failure to reduce the price of the unsold lands, according to the memorial of the people of Illinois? Do you think these effects were due solely to the cause mentioned? Why?
2. Which of the two views mentioned by Senator Hayne do you favor? Is he correct in saying that the main policy of the government had been to gain revenue from the public lands rather than to have them settled rapidly? Do you think that the government should have given the lands to the western settlers? Why?
3. Is the criticism given in the report of the committee on public lands a just one? Why?
4. What appears to be the purpose of Hunt's resolution? Do you agree with the criticism of Pettis? State the arguments set forth in the Delaware resolution in favor of distribution of the proceeds of the sales of public lands. Do you agree? Why? Do you agree with Benton that the distribution bill was a "land tariff bill"? Why?
5. What lands were to be withdrawn from the market and which could still be sold, according to Foot's resolution? Why?
6. Is the criticism of Senator Benton a just one? Does the resolution indicate a conscious effort on the part of Foot to check emigration? Is there any other interpretation to be placed on this document?
7. State Benton's notion of the relation of manufactures, the tariff, labor supply and wages, to emigration to the West? Do you agree that a high protective tariff would tax the South, injure the West and "pauperize the poor of the North"? Give your reason in each case.
8. Do you agree with Benton that Foot's resolution would

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have had a worse effect on emigration to the West than a high tariff? Why?

9. Was the plan of some of the western states to have the public lands ceded to them any more an attack on the Northeast, than the resolutions of Hunt and Foot were attacks on the West? If the lands had been ceded what effect would this have had on emigration to the West from the North and South?
10. State Benton's arguments on the relation of limitation of sales of public lands to emigration to the West. Do you agree with his assertion that the people of America "ought to be for a century to come, essentially an agricultural people"?
11. State the notions of Secretary of the Treasury Rush on the relation of manufactures, the tariff, labor supply and wages to emigration to the West. Compare these views with those of Benton. Which do you favor? Why? Was Rush in favor of checking emigration to the West?
12. If the ratio of capital to population were "kept on the increase," would there necessarily be an increase in the compensation for labor and an improvement in the "most numerous classes of the community"?
13. If so, would this improvement take place more quickly under this plan than one which would give "the most numerous classes" opportunity to acquire lands in the West quickly and at very little expense? Do you agree with Rush that at this date it was desirable gradually to reduce the excess of the country's agricultural population "over that engaged in other vocations"? Compare the views of Rush with those of Benton on this point.
14. If the government in reality offered a bounty in favor of agricultural pursuits, through a low price for the public lands, was Rush not justified in asking for a bounty for the encouragement of manufactures through a protective tariff? Why?
15. Comment on the phrase "The eye of legislation, intent

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upon the whole good of the nation, will look to each part, not separately as a part, but in conjunction with the whole."

16. What is the relation between the establishment of domestic manufactures and emigration to the unsettled parts of the country, according to the memorial of the tariff convention of 1832? Do you agree that this is an advantage? Why?
17. Compare Mr. Robinson's arguments against a limitation of emigration from the older states to the West with those of Mr. Rush in favor of the same. Which do you favor? Why?
18. State Mr. Ewing's arguments in favor of the views of Mr. Rush, on the relation of manufactures to emigration to the West. Compare with those of Benton. Which do you favor? Why?
19. State the views of John Quincy Adams on the relations of North and West in 1829-30. Explain just how the "manufacturing and free-labor interest of the North and East" would be sacrificed.
20. Do you agree with Webster's assertions that the East had not at any time "shown an illiberal policy towards the West," or ever "manifested hostility to the West," or ever tried to restrain emigration to the West?
21. In view of Benton's statement of the vote on the passage of the Northwest Ordinance how do you account for the statement of Webster that "this great measure again was carried by the North and by the North alone"?
22. Did New England and Webster have the same attitude toward the tariff from 1824-1830, as in the period up to 1824? Why does Webster fail to refer to the tariff of 1828, or to Hunt's or to Foot's resolution?
23. Was the attitude of New England on internal improvements due entirely to her interest in the West and its development?
24. Compare Webster's interpretation of the report of Secretary Rush with that given by Benton, Hayne, and Ewing. What difference do you observe?

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25. Do you agree that the attitude and votes of New England on the acts of 1820-21 "may be taken as samples and specimens of all the rest"?
26. On the whole does Webster prove to your satisfaction, that "no portion of the country has acted with either more liberality or more intelligence on the subject of the Western lands in the New States than New England"?
27. Do you agree with Benton that the Foot resolution and that referring to the surrendering of the public lands in the new states to the "avarice of the old," was proof of the "relative affection which the two Atlantic sections of the Union bear to the West"?
28. What distinction does Benton make in the attitude of different classes of the population of New England toward the West? Compare these views with those of John Quincy Adams in his letter to Waterhouse. What inference do you draw?
29. Why did Benton decline the offer of an alliance of New England with the West against the South?
30. Draw up a list of arguments, obtained by interpreting each document given when possible, in a way to show that the North Atlantic States were not hostile to the development of the West. Make a similar list to the contrary.
31. It has been asserted that "The exhibitions of hostility which the West was prone to cite were fancied rather than real." Are the documents, in your opinion, in favor of or against this view?
32. Indicate all cases you can find in the documents of what appear to be misstatement, distortion or exaggeration of facts; prejudice or insincerity on the part of the speaker; opinions set forth as facts; conclusions based on insufficient evidence; conflicting interpretations; facts interpreted in a way to further sectional ends; double interpretations, one indicating sectional ends, the other the interests of the nation as a whole.

IV. The Sources

1. *The Writings of James Monroe*, edited by S. M. Hamilton, Vol. I, pp. 144-151. [James Monroe to Patrick Henry.]

NEW YORK, Aug. 12, 1786.

5 DEAR SIR,—I have wished to communicate for
sometime since to you an account of a transaction
here, for your sentiments respecting it, but have
declined from the want of a cypher, that of the
delegation being we fear lost. The aff^r however
10 has come to such a crisis and is of such high impor-
tance to the U. S. & ours in particular, that I shall
risque the communication without that cover.
Jay, you know, is intrusted with the negotiation
with the Spⁿ resident here for the free naviga-
15 tion of the Mississippi & the boundaries between
Georgia and the Floridas; his instructions, altho'
they authorize by implication the formation of a
treaty of commerce, confine him expressly with re-
spect to those points, & prohibit his entering into
20 any engagement whatever wh. shall not stipulate
them in our favor. Upon my arrival here in
Dec^r last (having been previously well acquainted

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with Mr. Jay) in conversation with him I found he had agreed with Gardoqui to postpone the subject of the Mississippi &c, in the first instance & to take up that of a commerc^l treaty; that in this they
5 had gone so far as that Mr. Jay was possessed of the principles on wh. he wo^d agree to make it, upon condition on our part, of a forbearance of the use of the Mississippi for 25 or 30 years. I soon found in short that Mr. Jay was desirous of occluding the
10 Mississippi and of making what he term'd advantageous terms in the treaty of commerce the means of effecting it. Whether he suppos'd I was of his opinion or not, or was endeavoring to prevail on me to be so, I cannot tell, but as I expressed no senti-
15 ment on the subject he went further, & observ'd 'that if the affr. was brought to the view of Congress they wo^d most probably disagree to it, or if they sho^d approve the project, conduct themselves so indiscreetly as to suffer it to become known
20 to the French & Engl^h residents here & thus defeat it. To avoid this he said it occur'd to him as expedient to propose to Congress that a Committee be appointed to controul him in the negotiation, to stand to him in the room of Congress & he to
25 negotiate under the Committee.' I then reminded him of the instructions from our State respecting the Mississippi to the delegation & of the impossibility of their concurring in any measures of the kind. Our communications on this subject ended

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from that time. Upon the arrival of Colo. Grayson I communicated to him all these circumstances, with my opinions on them. From that time, and I had reason to believe he had begun even before my
5 arrival, we have known of his intriguing with the members to carry the point. On 27. of May he addressed a letter to Congress precisely in the sentiment above, stating difficulties in the negotiations & proposing that 'a Committee be appointed with
10 full power to *direct & instruct* him on every point relative to the proposed treaty with Spain.' As we knew the object was to extricate himself from the instructions respecting the Mississippi we of course opposed it. We found he had engaged the
15 eastern states in the intrigue, especially Mass., that New York, Jersey & Pen^a were in favor of it & either absolutely decided or so much so as to promise little prospect of change. The Committee propos'd by the Secretary was ad-
20 mitted generally to be without the powers of Congress. Since 9 states only can give an instruction for the formation of a treaty, to appoint a Committee with the power of 9 states was agreed to be a subversion of the govt. & therefore improper.
25 The letter however was referr'd to a Committee, who ultimately agreed to report that the Committee be discharged & the subject referred to a Committee of the whole & the Secr^y ordered to attend. He did so, and come (sic) forward fully with

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the plan of a commerc^l treaty condition'd with the forbearance of the use of the Mississippi for 25 or 30 years, with a long written speech, or report, in favor of it. The project is in a few words this:

5 '1 That the merchan^{ts} of America & Spⁿ shall enjoy, the former in the ports of Spⁿ & the Canaries, the latter in those of the U. S. the rights of native merchan^{ts} reciprocally. 2. That the same tonnage shall be paid on the ships of the two parties

10 in the carriage of the productions & the manufactures of the 2 countries. 3. That the *bona fide* manufactures & productions of the United States (tobacco only excepted which shall continue under its present regulations) may be imported in American or

15 Spanish vessels into any of his majesty's ports aforesaid in like manner as if they were the productions of *Spain*. And on the other hand that the *bona fide* manufactures & productions of his majesty's Dominions may be imported into the U. S. in Spⁿ

20 or American vessels, in like manner as if they were those of the said States, and further that all such duties and imposts as may *mutually* be thought necessary to lay on them *by either party*, shall be ascertained & regulated on principles of exact

25 reciprocity by a tariff to be form'd by a convention for the purpose, to be negotiated & made within *one year* after the exchange of the ratification of this treaty and in the meantime that they shall severally pay in the ports of each other the duties

Source Problems in United States History

of natives only. 4. Masts & timber shall be bought here for the royal navy, provided that upon their carriage to Spain they shall cost no more than if they were bought elsewhere. 5. That in consideration of these advantages to the U. S. they agree to forbear the use of the Mississippi for 25 or 30 years, the terms for which the treaty shall last.' This treaty independent of the sacrifice, I consider as a very disadvantageous one & such as we should not
10 accept, since it in reality gains us nothing & subjects to very high restrictions, such as exist in none of our other treaties, altho' they are in effect bad enough. But they are to be justified especially those of France and Holland in the motives which
15 led to them, to bring those powers into the war. The subject was referred to a Committee of the whole on Thursday last who after debate rose and reported that they have come to no decision and require leave to sit again. The delegation of Mass. moved
20 in committee that the ultimatum in his instructions respecting the Mississippi be repealed, in which event he would have unlimited powers to act at pleasure. This they said might be carried by 7 states. We observed that without the
25 ultimatum the instruction would be a new one, and of course 9 states necessary to it. The subject will again be taken up in a few days. It appears manifest they have 7 states & we 5, Maryland inclusive, with the southern states. Delaware is absent. It

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also appears that they will go on under 7 states in the business & risque the preservation of the confederacy on it. We have & shall throw every possible obstacle in the way of the measure, protest against
5 the right of 7 either to instruct or ratify, give information of this to Mr. Jay & the Spⁿ resident so that neither may be deceived in the business. This is one of the most extraordinary transactions I have ever known, a minister negotiating
10 expressly for the purpose of defeating the object of his instructions, and by a long train of intrigue & management seducing the representatives of the states to concur in it. It is possible some, or perhaps one, (in which case it will be even) member
15 may change his sentiments, but as he risked his reputation upon carrying it, it is to be presumed he had engaged them too firmly in the business to leave a possibility of their forsaking him. This, however, is not the only subject of consequence I
20 have to engage your attention to. Certain it is that committees are held in this town of Eastern men and others of this State upon the subjects of dismemberment of the States east of the Hudson from the Union & the erection of them into a separate
25 govt. To what lengths they have gone I know not, but have assurances as to the truth of the above position, with this addition to it, that the measure is talked of in Mass. familiarly, & is supposed to have originated there.

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. . . P. S. The object in the occlusion of the Mississippi on the part of these people so far as it is extended to the interests of their States (for those of a private kind gave birth to it) is to break up
5 so far as will do it, the settlements on the western waters, prevent any in future, and thereby keep the States southward as they now are—or if settlements will take place, that they shall be on such principles as to make it the interest of the people to separate
10 from the Confederacy, so as effectually to exclude any new State from it. To throw the weight of population eastward & keep it there, to appreciate the vacand (sic) lands of New York and Massachusetts.¹ In short, it is a system of policy which has for its
15 object the keeping the weight of the government & population in this quarter, & is proposed by a set of men so flagitious, unprincipled & determined in their pursuits, as to satisfy me beyond a doubt they have extended their views to the dismemberment of
20 the govt & resolved either, that sooner than fail it shall be the case, or being only desirous of that event have adopted this as the necessary means of effecting it. In conversations at which I have been present, the Eastern people talk of a dis-
25 memberment so as to include Pena.

.
Be assur'd as to all the subjects upon which I have given you information above, it hath been founded

¹Compare document II below.

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on authentic documents. I trust these intrigues are confined to a few only, but by these men I am assured are not; whatever anxiety they may give you I am persuaded it cannot be greater than that which
5 I have felt. J. M.

2. *Debates and Other Proceedings of the Convention of Virginia*, by David Robertson. [Speech of William Grayson, June 13, 1788.]

Page 243.

10 . . . The southern states thought that the navigation of the Mississippi should not be trusted to any hands, but those in which the confederation had placed the right of making treaties. That system required the consent of nine states for that purpose.
15 The Secretary for Foreign Affairs was empowered to adjust the interfering claims of Spain and the United States, with the Spanish Minister, but as my honorable friend said, [Mr. Monroe] with an express prohibition of entering into any negotiation
20 that would lead to the surrender of that river. Affairs continued in this state for some time. At length a proposition was made to congress, not directly, but by a side wind. The first proposal was, to take off the fetters of the Secretary. When the
25 whole came out, it was found to be a proposal to cede the Mississippi to Spain for 25 or 30 years, (for it was in the disjunctive) in consideration of certain commercial stipulations. In support of this proposal, it was urged, that the right

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was in him who surrendered, and that their acceptance of a temporary relinquishment, was an acknowledgment of our right, which would revert to us at the expiration of that period;—that we could
5 not take it by war; that the thing was useless to us, and that it would be wise and politic to give it up, as we were to receive a beneficial compensation for that temporary cession. Congress, after a great deal of animosity, came to a resolution, which, in
10 my opinion, violated the confederation. It was resolved by seven states, that the prohibition in the secretary's instructions should be repealed; whereby the unrepealed part of his instructions authorised him to make a treaty, yielding that inestimable
15 navigation, although by the confederation, nine states were necessary to concur in the formation of a treaty!

3. *Debates and Other Proceedings, etc.* [Speech of James Madison, June 12, 1788.]

20 Page 223.

. . . In the time of our greatest distresses, and particularly when the southern states were the scene of war, the southern states cast their eyes around to be relieved from their misfortunes. It
25 was supposed that assistance might be obtained for the relinquishment of that navigation. It was thought that for so substantial a consideration, Spain might be induced to afford decisive succour. It was opposed by the northern and eastern states.

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They were sensible that it might be dangerous to surrender this important right, particularly to the inhabitants of the western country. But so it was, that the southern states were for it, and the eastern
5 states opposed it.

4. *Debates and Other Proceedings, etc.* [Speech of William Grayson, June 13, 1788.]

Pages 244-245.

. . . It has been urged, by my honorable friend
10 on the other side, (*Mr. Madison*) that the eastern states were averse to surrender it during the war, and that the southern states proposed it themselves, and wished to yield it. My honorable friend last up has well accounted for this disgraceful offer, and I
15 will account for the refusal of the eastern states to surrender it.

Mr. Chairman, it is no new thing to you to discover these reasons. It is well known, that the Newfoundland fisheries and the Mississippi are
20 balances for one another;—that the possession of one tends to the preservation of the other. This accounts for the eastern policy. They thought that, if the Mississippi was given up, the southern states would give up the right of the fishery, on which their
25 very existence depends. It is not extraordinary therefore, while these great rights of the fishery depend on such a variety of circumstances, the issue of war, the success of negotiations, and numerous other causes, that they should wish to preserve this great

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counterbalance.—What has been their conduct since the peace? When relieved from the apprehensions of losing that great advantage, they became solicitous of securing a superiority of influence in the national councils. They looked at the true interest of nations.—Their language has been,—‘*Let us prevent any new states from rising in the western world, or they will outvote us—we shall lose our importance, and become as nothing in the scale of nations. If we do not prevent it, our countrymen will remove to those places, instead of going to sea, and we shall receive no particular tribute or advantage from them.*’

5. *Debates and Other Proceedings, etc.* [Speech of James Madison, June 13, 1788.]

15 Pages 246–247.

. . . From the best information, it never was the sense of the people at large, or the prevailing characters of the eastern states, to approve of the measure. If interest, sir, should continue to operate on them, I humbly conceive that they will derive more advantage from holding the Mississippi, than even the southern states, For, if the carrying business be their natural province, how can it be so much extended and advanced as by giving encouragement to agriculture in the western country, and having the emolument of carrying their produce to market? The carrying trade must depend on agriculture for its support in a great measure. In what place is agriculture so capable of improvement and

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great extension, as in the western country? But whatever considerations may prevail in that quarter, or any other, respecting their interest, I think we may fairly suppose that the consideration which the
5 honorable member mentioned, and which has been repeated, I mean the emigrations which are going on to the westward, must produce the same effect as to them, which it may produce with respect to us. Emigrations are now going on from that quar-
10 ter, as well as from this state. . . . I do not conceive, however, that there is that extreme aversion, in the minds of the people of the eastern states, to emigrate to the westward, which was insinuated by my honorable friend. Particular citizens, it cannot be
15 doubted, may be averse to it. But it is the sense of the people at large, which will direct the public measures. We find, from late arrangements made between Massachusetts and New-York, that a very considerable country to the westward of New-York,
20 was disposed of to Massachusetts, and by Massachusetts to some individuals, to conduct emigrants to that country.

There were seven states who thought it right to give up the navigation of the Mississippi for 25
25 years, for several reasons which have been mentioned. As far as I can recollect, it was nearly as my honorable friend said. But they had no idea of absolutely alienating it. I think one material consideration which governed them was, that there

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were grounds of serious negotiation between Great-Britain and Spain, which might bring on a coalition between those nations, which might enable them to bind us on different sides, permanently withhold
5 that navigation from us, and injure us in other respects materially. The temporary cession, it was supposed, would fix the permanent right in our favor, and prevent that dangerous coalition. It is but justice to myself to say, that however plausible
10 the reasons urged for its temporary cession may have been, they never convinced me of its utility. I have uniformly disapproved of it, and do now.

6. *Debates and Other Proceedings, etc.* [Speech of William Grayson, June 13, 1788.]

15 Pages 249-250.

... With respect to the Mississippi and back-lands, the eastern states are willing to relinquish that great and essential right. For they consider the consequences of governing the union, as of more
20 importance than those considerations which he mentioned should induce them to favor it.

But, says the honorable gentleman, there is a great difference between actually giving it up altogether, and a temporary cession.—If the right was
25 given up for 25 years, would this country be able to avail herself of her right, and resume it at the expiration of that period? If ever the house of Bourbon should be at war with all Europe, then would be the golden opportunity of regaining it.

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Without this, we never could wrest it from the house of Bourbon, the branches of which always support each other. If things continue as they are now, emigrations will continue to that country. The
5 hope that this great national right will be retained, will induce them to go thither. But take away that hope, by giving up the Mississippi for 25 years, and the emigrations will cease. As interest actuates mankind, will they go thither when they
10 know they cannot enjoy the privilege of navigating that river, or find a ready market for their produce? . . .

It was alleged, that the emigrations from the eastern states will have the same effect as emigra-
15 tions from this country. I know every step will be taken to prevent emigrations from thence, as it will be transferring their population to the southern states.—They will coincide in no measure that will tend to increase the weight or influence of the
20 southern states.—There is, therefore, a wide line of distinction between migrations from thence and from hence. . . .

But, says he, Massachusetts is willing to protect emigrations.—When the act of Congress
25 passed, respecting the settlement of the western country, and establishing a state there, it passed in a lucky moment.—I was told that that state was extremely uneasy about it, and that in order to retain her inhabitants, lands, in the province of

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Maine, were lowered to the price of one dollar per acre. As to the tract of country conveyed by New-York to Massachusetts, neither of them had a right to it.— Perhaps that great line of policy of keeping the population on that side of the continent, in contradistinction to the emigrations to the westward of us, actuated Massachusetts in that transaction. There is no communication between that country and the Mississippi. The two great northern communications are by the North River, and by the river St. Lawrence, to the Mississippi. But there is no communication between that country where the people of Massachusetts emigrate, and the Mississippi; nor do I believe that there will be one traveller from it thither.

7. *Debates and Proceedings, etc.* [Speech of Mr. Grayson, June 12, 1788.]

Page 210.

. . . With respect to the citizens of the eastern and some of the middle states, perhaps the best and surest means of discovering their general dispositions, may be by having recourse to their interests. This seems to be the pole star to which the policy of nations is directed. If this supposition should be founded, I think they must have reasons of considerable magnitude for wishing the occlusion of that river. If the Mississippi was yielded to Spain, the migration to the western country would be stopped, and the Northern States would, not only

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retain their inhabitants, but preserve their superiority and influence over that of the southern. If matters go on in their present direction, there will be a number of new states to the westward—population may become greater in the southern scale—the ten miles square may approach us! This they must naturally wish to prevent.

8. *Debates and Proceedings, etc.* [Speech of James Monroe, June 13, 1788.]

10 Pages 242-243.

. . . Mr. *Monroe* added several other observations the purport of which was

. . . That the northern states were inclined to yield it [the Mississippi]: That it was their interest to
15 prevent an augmentation of the southern influence and power; and that, as mankind in general, and states in particular, were governed by interest, the northern states would not fail of availing themselves of the opportunity given them by the constitution,
20 of relinquishing that river, in order to depress the western country, and prevent the southern interest from preponderating.

9. *Register of Debates in Congress*, 21st Congress, 1st Session, Senate, Vol. VI, pt. 1. [Speech of
25 Senator Benton of Missouri, February 2, 1830.]

Pages 98-99.

. . . From this instant [Jay treaty of 1786], the division between the North and South, on the subject of the West, sprung into existence. A series

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of motions and votes ensued, and a struggle which continued two years, in which Maryland, and all South, voted one way, and New Jersey, and all North voted the other. The most important of these motions were, 1. A motion by Mr. King, of New York, to repeal the clause in the instructions to Mr. Jay which made the navigation of the Mississippi a *sine qua non*, which was carried by the seven Northern States against the others. 2. A motion by Mr. Pinckney, of S. Carolina, to revoke the whole instruction, and stop the negotiation: lost by the same vote. 3. A motion by Mr. Pinckney, seconded by Mr. Monroe, to declare it a violation of the Articles of Confederation, for seven States to alter the instructions for negotiating a treaty, those articles requiring the consent of nine States on questions of that kind; lost by the same vote. 4. A motion by the delegates from Virginia to make it a *sine qua non* that the citizens of the United States should have the privilege of taking their produce to New Orleans; the United States to have a consul, and citizens factors there; that the vessels be allowed to return empty, and the produce to be exported on paying a small export duty: lost by the same array of votes. 5. A motion made by Mr. St. Clair, seconded by Mr. King, to make the same proposition, to be obtained, if possible, but not a *sine qua non*; carried by the ayes of New Hampshire, Massachusetts, Rhode Island, Connecticut,

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New York, New Jersey, Pennsylvania, seven, against the noes of Maryland, Virginia, North Carolina, South Carolina, Georgia, five; Delaware not present . . . in September, 1788, [Mr. Madison] offered
5 a resolution that no further progress be made in the negotiation with Spain, and that the whole subject be referred to the new Federal Government, which was to go into operation the ensuing year. This resolution was agreed to, and the Mississippi
10 saved. Thus ended an arduous and eventful struggle. The termination was fortunate and happy, but the spirit which produced it has never gone to sleep. The idea that the Western rivers are a fund for the purchase of Atlantic advantages, in treaties
15 with foreign Powers, has been acted upon often since. The Mississippi, the Arkansas, the Red River, the Sabine, and the Columbia, can bear witness of this. The idea that the growth of the West was incompatible with the supremacy of the Northeast,
20 has since crept into the legislation of the Federal Government, as will be fully developed in the course of this debate.

10. *Register of Debates, etc. Ibid.* [Speech of Senator Holmes of Maine, January 19, 1830.]

25 Pages 28-29.

. . . The Senator [Mr. B] has read from the debates of the Virginia convention, to prove that the East were disposed to give to Spain our right of navigation of the Mississippi. It seems that this alienation came

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incidentally into discussion, and it was apprehended that, under the constitution which was to be adopted, the new Government would have more power to do this than would the old confederation. A Mr. Grayson had stated that this was the disposition of the East, and chiefly inferred it from the supposed fact that we had no interest in that navigation. If this Mr. Grayson was an able statesman, he had not then learnt much of geography; for he stated that Massachusetts had no intercourse with the Mississippi but by the St. Lawrence, or the Hudson! When the fact is, that Massachusetts for half a century, has had more intimate intercourse with the Mississippi than even the State of Maryland. A man who could deliberately advance such an opinion, can scarcely be considered very high authority on any subject. Mr. Madison, however, a real statesman, put it all right, showed the connection of the East with the West, and denied that the Eastern people ever would be willing to make the concession.

11. *History of the Formation of the Constitution of the United States of America*, by George Bancroft, Vol. I, Appendix. [William Grayson to George Washington, April 15, 1785.]

25 Page 427.

. . . Some gentlemen looked upon it [distribution of the public lands] as a matter of revenue only, and that it was true policy to get the money without parting with inhabitants to populate the country,

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and thereby prevent the lands in the original states from depreciating.¹ Others (I think) were afraid of an interference with the lands now at market in the individual States. Part of the eastern gentlemen
5 wish to have the lands sold in such a manner as to suit their own people who may choose to emigrate, of which I believe there will be great numbers, particularly from Connecticut. But others are apprehensive of the consequences which may result from
10 the new states taking their position in the confederacy. They, perhaps, wish that this event may be delayed as long as possible.

12. *History of the Formation of the Constitution, etc.*

[Washington to Grayson, April 25, 1785.]

15 Pages 431-432.

. . . These are the first thoughts, perhaps incongruous ones, and such as I myself might reprobate upon more mature consideration. At present, however, I am impressed with them, and (under the
20 rose) a penetrating eye and close observation will discover, through various disguises, a disinclination to add new states to the confederation westward of us; which must be the inevitable consequence of emigration to, and the population of, that territory.
25 And as to restraining the citizens of the Atlantic states from transplanting themselves to that soil, when prompted thereto by interest or inclination—you might as well attempt, while our governments

¹ Compare document 1, the P. S. of Monroe's letter to Henry.

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are free, to prevent the reflux of the tide when you had got it into your rivers.

13. *Register of Debates in Congress*, 21st Congress, 1st Session, Senate, Vol. VI, pt. 1. [Speech
5 of Senator Benton, January 18 and February 2, 1830.]

Pages 25-26.

. . . The ordinance [Grayson land ordinance, April 14, 1785] reported by the committee¹ contained the plan of surveying the public lands, which
10 has since been followed. It adopted the scientific principle of ranges of townships, which has been continued ever since, and found so beneficial in a variety of ways to the country. The ranges began on
15 the Pennsylvania line, and proceeded West to the Mississippi, and since the acquisition of Louisiana, they have proceeded west of that river. The townships began upon the Ohio river, and proceeded north to the Lakes. The townships were divided into
20 sections [thirty-six] of a mile square, six hundred and forty acres each, and the minimum price was fixed at one dollar per acre, and not less than a section to be sold together.

Page 99 [February 2, 1830].

25 . . . The ordinance of the same epoch, for the sale of the Western lands, has also been celebrated, and

¹ The committee was composed of: Long (N. H.), King (Mass.), Howell (R. I.), Johnson (Conn.), R. R. Livingstone (N. Y.), Stewart (N. J.), Gardner (Pa.), J. Henry (Md.), Grayson (Va.), William-
30 son (N. C.), Bull (S. C.), Houston (Ga.).

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deservedly, for the beauty and science of its system of surveys. The honor of this ordinance is also assumed for the Northeast. Let it be so. I know nothing to the contrary, and what I do know favors that
5 idea. The ordinance came from a committee of twelve, of whom eight were from the north, four from the south side of the Potomac. But, as it came from that committee, it would have left the whole North-western region a haunt for wild beasts and savages.
10 The clause which required that every previous township should be sold out complete, before a subsequent one was offered for sale, would have produced this result, and was intended to produce it.

Pages 25-26 [January 18, 1830].

15 . . . This was tantamount to a law that land should not be sold; that the country should not be settled: for it is certain that every township, or almost every one, would contain land unfit for cultivation, and for which no person would give six hundred and
20 forty dollars for six hundred and forty acres. . . . It was a wicked and preposterous provision. It required the people to take the country clean before them; buy all as they went; mountains, hills, and swamps; rocks, glens, and prairies. They were to
25 make clean work, as the giant Polyphemus did when he ate up the companions of Ulysses: . . .

When this ordinance was put upon its passage in Congress, two Virginians, whose names, for that act alone, would deserve the lasting gratitude of the

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West, levelled their blows against the obnoxious provision. Mr. Grayson moved to strike it out, and Mr. Monroe seconded him; and, after an animated and arduous contest, they succeeded. The whole
5 South supported them; not one recreant arm from the South; many scattering members from the North also voted with the South, and in favor of the infant West; proving then, as now, and as it always has been, that the West has true supporters of her
10 rights and interests—unhappily not enough of them—in that quarter of the Union from which the measures have originated that several times threatened to be fatal to her.

Page 99 [February 2, 1830].

15 . . . Massachusetts,¹ and some others contended for it [*viz.*, the ordinance as originally reported] to the last. The Northwest is therefore indebted to the South for the sale of its lands: it is also indebted to it for an unsuccessful attempt to promote
20 the settlement of the country by reducing the size of the tracts to be sold. The ordinance, as reported, fixed six hundred and forty acres as the smallest division that might be offered for sale. Mr. Grayson, of Virginia, seconded by Mr. Monroe, moved
25 to reduce the quantity to three hundred and twenty acres, but failed in the attempt. The Virginia Delegation voted for it unanimously; South Carolina

¹ Compare document 40 below, giving Webster's general view of the relation of New England to the West.

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and Georgia, both voted for it, but, having but one member present, the vote did not count. Maryland voted for it: all the rest of the States against it.

5 14. *Register of Debates, etc. Ibid.* [Speech of Senator Holmes of Maine, January 19, 1830.]

Page 28.

... But because it was proposed, by eastern members of the old Congress, to provide, in the ordinance
10 of '87 [*sic*, in fact '85] that every section in one township should be sold, before another should be offered for sale, (which proposition did not prevail) the Senator infers that this is evidence of hostility. Now it seems to me that this inference is, to say
15 the least, a little uncharitable. I could easily perceive that a very patriotic and charitable motive might have induced this proposition. At that time the settlers would be opposed to numerous and powerful savage tribes. They would be obliged in
20 some measure to defend themselves. It would be safest, therefore, to keep them as compact as possible: for the more they should scatter, the more they would be exposed. The members from the East had near and dear friends, who had emigrated
25 to that country, and it might be their motive to protect them. When a good and bad motive may be assigned to an act, it is the part of charity to assign the good, especially when the person implicated is dead, and cannot therefore defend his motives.

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15. *The Records of the Federal Convention of 1787.*

Edited by Max Farrand. Vol. I. [Speech by
Gouverneur Morris, of New York, July 5,
1787.]

5 Pages 533-534.

... He [Mr. Morris] thought property ought to be taken into the estimate as well as the number of inhabitants. Life and liberty were generally said to be of more value, than property. An accurate
10 view of the matter would nevertheless prove that property was the main object of Society. The savage State was more favorable to liberty than the Civilized; and sufficiently so to life. It was preferred by all men who had not acquired a taste for
15 property; it was only renounced for the sake of property which could only be secured by the restraints of regular Government. These ideas might appear to some new, but they were nevertheless just. If property then was the main object of Govt.
20 certainly it ought to be one measure of the influence due to those who were to be affected by the Government. He looked forward also to that range of New States which wd. soon be formed in the west. He thought the rule of representation ought to be so
25 fixed as to secure to the Atlantic States a prevalence in the National Councils. The new States will know less of the public interest than these, will have an interest in many respects different, in particular will be little scrupulous of involving the Community in

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wars the burdens & operations of which would fall chiefly on the maritime States. Provision ought therefore be made to prevent the maritime States from being hereafter outvoted by them. He thought this might be easily done by irrevocably fixing the number of representatives which the Atlantic States should respectively have, and the number which each new State will have. This wd. not be unjust, as the western settlers wd. previously know the conditions on which they were to possess their lands. It would be politic as it would recommend the plan to the present as well as future interest of the States which must decide the fate of it.

16. *The Records of the Federal Convention, etc.*, Vol.

I. [Speech of George Mason, of Virginia, July 11, 1787.]

Pages 578-579.

. . . [Mr. Mason said] Strong objections had been drawn from the danger to the Atlantic interests from new Western States. Ought we to sacrifice what we know to be right in itself, lest it should prove favorable to States which are not yet in existence. If the Western States are to be admitted into the Union as they arise, they must, he wd. repeat, be treated as equals, and subjected to no degrading discriminations. They will have the same pride & other passions which we have, and will either not unite with or will speedily revolt from the Union, if they are not in all respects placed on an

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equal footing with their brethren. It has been said they will be poor, and unable to make equal contributions to the general Treasury. He did not know but that in time they would be both more
5 numerous & more wealthy than their Atlantic brethren.¹ The extent & fertility of their soil, made this probable; and though Spain might for a time deprive them of the natural outlet for their productions, yet she will, because she must, finally
10 yield to their demands. He urged that numbers of inhabitants, though not always a precise standard of wealth was sufficiently so for every substantial purpose.

17. *The Records of the Federal Convention, etc.*,
15 Vol. I. [Speech of Gouverneur Morris, July 11, 1787.]

Page 583.

. . . The remarks of (Mr. Mason) relative to the Western Country had not changed his opinion on
20 that head. Among other objections it must be apparent they would not be able to furnish men equally enlightened, to share in the administration of our common interests. The Busy haunts of men not the remote wilderness, was the proper School
25 of political Talents. If the Western people get the power into their hands they will ruin the Atlantic interests. The Back members are always most

¹ Crossed out, 'tho' perhaps not before they might choose to become a separate people.'

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averse to the best measures. He mentioned the case of Pena. formerly. The lower part of the State had ye. power in the first instance. They kept it in yr. own hands. & the country was ye. better for it.

18. *The Records of the Federal Convention, etc.*, Vol.

I. [Speech of Gouverneur Morris, July 13, 1787.]

Pages 604-605.

10 . . . The train of business & the late turn which it had taken, had led him he said, into deep meditation on it, and He wd. candidly state the result. A distinction had been set up & urged, between the Nn. & Southn. States. He had hitherto considered this doctrine as heretical. He still thought the distinction groundless. He sees however that it is persisted in; and that the Southn. Gentleman will not be satisfied unless they see the way open to their gaining a majority in the public Councils.

20 The consequence of such a transfer of power from the maritime to the interior & landed interest will he foresees be such an oppression of commerce, that he shall be obliged to vote for ye. vicious principle of equality in the 2d. branch in order to provide

25 some defence for the N. States agst. it. But to come now more to the point, either this distinction is fictitious or real: if fictitious let it be dismissed & let us proceed with due confidence. If it be real, instead of attempting to blend incompatible things,

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let us at once take a friendly leave of each other. There can be no end of demands for security if every particular interest is to be entitled to it. The Eastern States may claim it for their fishery, and for
5 other objects, as the Southn. States claim it for their peculiar objects. In this struggle between the two ends of the Union, what part ought the Middle States in point of policy to take: to join their Eastern brethren according to his ideas. If the Southn.
10 States get the power into their hands, and be joined as they will be with the interior Country they will inevitably bring on a war with Spain for the Mississippi. This language is already held. The interior Country having no property nor interest ex-
15 posed on the sea, will be little affected by such a war. He wished to know what security the Northn. & middle States will have agst. this danger. It has been said the N.C.S.C. and Georgia only will in a little time have a majority of the people of America.
20 They must in that case include the great interior Country, and every thing was to be apprehended from their getting the power into their hands.

19. *The Records of the Federal Convention, etc.*, Vol.

II. [Speech of Mr. Gerry, of Massachusetts,

25 July 14, 1787.]

Pages 2-3.

Mr. Gerry. wished before the question should be put, that the attention of the House might be turned to the dangers apprehended from Western States;

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He was for admitting them on liberal terms, but not for putting ourselves into their hands. They will if they acquire power like all men, abuse it. Th(e)y will oppress commerce, and drain our wealth into the Western Country. To guard agst. these consequences, he thought it necessary to limit the number of new States to be admitted into the Union, in such a manner, that they should never be able to outnumber the Atlantic States. He accordingly moved 'that in order to secure the <liberties of the> States already confederated, the <number of> Representatives in the 1st. branch <of the States which shall hereafter be established> shall never exceed in number, the Representatives from such of the States <as shall accede to this confederation.>'¹

Mr. King, seconded the motion.

Mr. Sherman, thought there was no probability that the number of future States would exceed that of the Existing States. If the event should ever happen, it was too remote to be taken into consideration at this time. Besides We are providing for our posterity, for our children & our grand Children, who would be as likely to be citizens of new Western States, as of the old States. On this consideration alone, we ought to make no such discrimination as was proposed by the motion.

Mr. Gerry. If some of our children should remove, others will stay behind, and he thought it

¹ Revised from *Journal*.

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incumbent on us to provide for their interests. There was a rage for emigration from the Eastern States to the Western Country and he did not wish those remaining behind to be at the mercy of the
5 Emigrants. Besides foreigners are resorting to that Country, and it is uncertain what turn things may take there.—On the question for agreeing to the Motion of Mr. Gerry, <it passed in the negative.>

Mas. ay. Cont. ay. N.J. no Pa. divd. Del: Ay.
10 Md.ay.Va. no. N.C. no. S.C. no. Geo. no. [Ayes-4; noes-5; divided-1.]

20. *The Records of the Federal Convention, etc.*, Vol.

III. [Letter of Gouverneur Morris to Henry W. Livingstone, December 4, 1803.]

15 Page 404.

... I always thought that, when we should acquire Canada and Louisiana it would be proper to govern them as provinces, and allow them no voice in our councils. In wording the third section of the fourth
20 article, I went as far as circumstances would permit to establish the exclusion. Candor obliges me to add my belief, that, had it been more pointedly expressed, a strong opposition would have been made.

21. *Documents relating to New-England Federalism.*

25 [Timothy Pickering to Rufus King, March 4, 1804.]

Page 352.

... And, if a separation should be deemed proper, the five New England States, New York, and New

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Jersey would naturally be united. Among those seven States, there is sufficient congeniality of character to authorize the expectation of practicable harmony and a permanent union, New York the
5 centre. Without a separation, can those States ever rid themselves of negro Presidents and negro Congresses, and regain their just weight in the political balance? At this moment, the slaves of the Middle and Southern States have fifteen repre-
10 sentatives in Congress, and they will appoint that number of electors of the next President and Vice-President; and the number of slaves is continually increasing. You notice this evil. But will the slave States ever renounce the advantage? As popula-
15 tion is in *fact* no rule of taxation, the negro representation ought to be given up. If refused, it would be a strong ground for separation, though perhaps an earlier occasion may present to declare it. How many Indian wars, excited by the avidity of the
20 Western and Southern States for Indian lands, shall we have to encounter, and who will pay the millions to support them? The Atlantic States. Yet the first moment we ourselves need assistance, and call on the Western States for taxes, they will declare
25 off, or at any rate refuse to obey the call. Kentucky effectually resisted the collection of the excise; and of the thirty-seven thousand dollars' direct tax assessed upon her so many years ago, she has paid only four thousand dollars, and probably will never

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pay the residue. In the mean time, we are maintaining their representatives in Congress for governing us, who surely can much better govern ourselves. Whenever the Western States detach themselves, 5 they will take Louisiana with them. In thirty years the white population on the Western Waters will equal that of the thirteen States when they declared themselves independent of Great Britain. On the census of 1790, Kentucky was entitled to two rep-
10 resentatives; under that of 1800, she sends *six!* . . .

22. *Writings of John Quincy Adams*, edited by W. C. Ford, Vol. IV. [Letter of John Quincy Adams to Dr. Benjamin Waterhouse, October 24, 1813.]

15 Pages 526-527.

. . . I am not displeased to hear that Ohio, Kentucky, Indiana and Louisiana are rapidly peopling with Yankees. I consider them as an excellent race of people, and as far as I am able to judge I believe
20 that their moral and political character, far from degenerating improves by emigration. I have always felt on that account a sort of predilection for those rising western states; and have seen with no small astonishment the prejudices harbored against
25 them by the New England junto-federalists. There is not upon this globe of earth a spectacle exhibited by man so interesting to my mind or so consolatory to my heart as this metamorphosis of howling deserts into cultivated fields and populous

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villages which is yearly, daily, hourly, going on by the hands chiefly of New England men in our western states and territories. If New England loses her influence in the councils of the Union it will not be owing to any diminution of her population occasioned by these emigrations; it will be from the partial, sectarian, or, as Hamilton called it *clannish* spirit which makes so many of her political leaders jealous and envious of the west and south. This spirit is in its nature narrow and contracted, and it always works by means like itself. Its natural tendency is to excite and provoke a counteracting spirit of the same character, and it has actually produced that effect in our country. It has combined the southern and western parts of the United States, not in a league but in a concert of political views adverse to those of New England. The fame of all the great legislators of antiquity is founded upon their contrivances to strengthen and multiply the principles of attraction in civil society. Our legislators seem to delight in multiplying and fomenting the principles of repulsion.

23. *Register of Debates in Congress*, 21st Congress, 1st Session (Senate), Vol. VI, pt. 1. [Speech of Senator Benton, February 2, 1830.]

Page 97.

. . . Having read this letter of Mr. Adams, Mr. B. continued. I will make no comment on the language here used. It is sufficiently significant without that

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trouble. 'Partial-sectarian-clannish-jealous-envious-narrow-contracted-excite-provoke-multiplying, fomenting, principles of repulsion'—are phrases which need no aid from the dictionary to uncover their
5 pregnant meaning. I will only ask for three or four concessions:

1. That the authority of the writer of the letter is canonical, and binding on the church.

2. That it goes the full length in charging the
10 New England leaders of 1813, with opposition to Western emigration.

3. That nothing which I have said of the motives, or conduct, of those who oppose this emigration, can compare in severity of expression with the lan-
15 guage of Mr. Adams.

4. That the political leaders of whom he spoke as opposing emigration of the West, upon such motives, and by such means, are the same who are now denying it on this floor, and wooing the West
20 into an alliance with them.

24. *American State Papers, etc., Public Lands*, Vol. IV, No. 448. [Application of Illinois for a Reduction in the Price of Certain Lands, February 3, 1825.]

25 Page 148.

To the honorable the Senate and House of Representatives of the United States in Congress assembled:

The memorial of the people of the State of Illinois, represented in the general assembly, respectfully

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shows: That your memorialists, believing that the existing laws relating to public lands are unequal in their operation, and injurious in their tendency both to the national interest and the welfare of large portions of the western country, beg leave to submit the following observations: The present price [*viz.*, \$1.25 per acre] of public lands, so far as it relates to those districts of country which have been recently offered for sale, affords no ground of complaint, but your memorialists believe that a distinction ought to be made between land thus situated and such as has been longer in market. In the latter case the most choice selections having been made by the bidders at public sale, by non-residents who have purchased on speculation, or by early settlers, the land remaining is either of inferior quality, or subject to some local disadvantages, and it would seem reasonable that its price should be reduced in proportion to its actual value. The value of such land will naturally be ascertained by comparing its quality with that of the adjacent tracts, and the purchaser would reluctantly pay for it the same price which has been given for superior soil and better situations. The natural consequence of such a state of things is, that the emigrant is driven to new and distant settlements where few have preceded him, and where the inconvenience of which we complain does not operate upon his choice. The tide of population is thus diverted into

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a thousand channels, and suffered to roll over immense regions, creating feeble and thinly scattered settlements, and leaving extensive tracts of wilderness behind. Under a government like ours, cemented
5 only by the mutual affection of the people, it is to be doubted whether a policy should be pursued which, by diffusing the population, weakens the political strength of the national and State confederacies, and loosens the ties which should bind the people
10 together. In a scattered population public institutions are seldom established; systems of education cannot be matured; moral restraints are tardily enforced; laws are feebly executed; and revenue raised with difficulty.

15 25. *Register of Debates, etc.*, 21st Congress, 1st Session (Senate), Vol. VI, pt. 1. [Speech of Senator Hayne of South Carolina, January 19, 1830.]

Page 32.

20 . . . There may be said to be two great parties in this country, who entertain very opposite opinions in relation to the character of the policy which the Government has heretofore pursued, in relation to the public lands, as well as to that which ought,
25 hereafter, to be pursued. I propose, very briefly, to examine these opinions, and to throw out for consideration a few ideas in connexion with them. Adverting first, to the past policy of the Government, we find that one party, embracing a very large

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portion, perhaps at this time a majority of the people of the United States, in all quarters of the Union, entertain the opinion, that, in the settlement of the new States and the disposition of the public
5 lands, Congress has pursued not only a highly just and liberal course, but one of extraordinary kindness and indulgence. We are regarded as having acted towards the new States in the spirit of parental weakness, granting to froward children, not only
10 every thing that was reasonable and proper, but actually robbing ourselves of our property to gratify their insatiable desires. While the other party, embracing the entire West, insist that we have treated them, from the beginning, not like heirs of the
15 estate, but in the spirit of a hard task-master, resolved to promote our selfish interests from the fruit of their labor. . . . In the creation and settlement of the new States, the plan has been invariably pursued, of selling out, from time to time, certain por-
20 tions of the public lands, for the highest price that could possibly be obtained for them in open market, and, until a few years past [1820] on long credits. In this respect, a marked difference is observable between our policy and that of every other nation
25 that has ever attempted to establish colonies or create new States. . . . Lands, which had been for fifty or a hundred years open to every settler, without any charge beyond the expense of the survey, were, the moment they fell into the hands of the

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United States, held up for sale at the highest price that a public auction, at the most favorable seasons, and not unfrequently a spirit of the wildest competition, could produce, with a limitation that they
5 should never be sold below a certain minimum price; thus making it, as it would seem, the cardinal point of our policy, not to settle the country, and facilitate the formation of new States, but to fill our coffers by coining our lands into gold.¹

10 26. *Register of Debates in Congress*, 23d Congress, 1st Session, Vol. X, pt. iv, Appendix. [Report from the Committee on Public Lands, House of Representatives, December 27, 1833.]

Pages 214-215.

15 . . . If, however, the subject be considered in reference to the *financial interest* of the General Government alone, it is believed that the price of the public lands should be reduced, after having been first offered at public sale, and then remaining a reason-
20 able time subject to private entry, at the present minimum. The Government of the United States

¹ Senator Benton summarized briefly the main arguments of Clay in opposition to the reduction of the price of lands thus: "—speculators to buy up all the public lands—destruction of the present
25 land system—splendid growth of the new States, and of Ohio in particular, under the influence of the present system—injury to former purchasers of public lands—fall in the value of all lands public and private—emigration from the old States—the land revenue paid by the old States—too rapid growth of the new States—
30 cessation of all sales, under the expectation of reducing prices." See speech June 28, 1832, *Register of Debates, etc.*, 22d Cong., 1st Sess., Vol. VIII, pt. 1, p. 1148.

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is probably the only vender, either of land or any other property, that holds the most inferior quality of any article at the same price with the best. If an individual were to maintain that all domestic
5 animals of a given species were of the same value, how inconsistent would he appear! If a merchant were to refuse to sell *kerseys* at any lower price than he could obtain for *superfine broadcloths*, his conduct would certainly be deemed utterly absurd. Yet
10 there is not greater absurdity in either of these positions, than there is in maintaining that *land of every quality* is worth, or should command, the *same price*.

The experience of the last ten years has demonstrated that lands of the greatest fertility, when
15 sold at auction, will only command a very small fraction above \$1.25 per acre. To prove this, it is only necessary to refer to official documents now on the files of the House. It is not probable that more than *one-tenth* of the public domain is of the
20 first quality; yet we refuse to let the remaining *nine-tenths* go at any lower price.

By a report (which is hereto annexed) made by the Secretary of the Treasury on the 22d January last, in answer to a resolution of the House, it appears
25 that the quantity of land to which the Indian and foreign titles had been extinguished, was 391,965,600 acres. Of that quantity there had, on the 31st December, 1831, been offered for sale, 130,932,205 acres; and only 26,524,450 acres had been sold.

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By the same report, the quantity of land subject to private entry, on the same day, (and which, of course, had been offered at public auction, and refused, at \$1.25 per acre,) was 104,407,755 acres.

As evidence of the great inferiority of this large quantity of land, it is shown by the same report that the quantity which had been offered and refused, at public sale in the several States, had been in market, and subject to private entry, the following periods: That in Ohio had nearly all been in market twenty years, the greater portion from twenty-five to thirty years; that in Indiana had nearly all been in market from fifteen to twenty years; that in Illinois had nearly all been in market for fifteen years and upwards; that in Missouri, an average of about twelve years; that in Alabama from twelve to twenty-two years, the average period may be said to be fifteen years; that in Mississippi from twelve to twenty years; that in Louisiana about thirteen years, and that in Michigan about thirteen years.

In December, 1828, a statement compiled from official documents, and printed by order of the Senate, showed that 74,358,881 acres were then subject to private entry, having been offered at public sale, and refused, at \$1.25 per acre; and that, of this quantity, 28,247,000 acres (more than one-third) were *unfit for cultivation*. Taking the same relative proportions of the quantity now subject to private entry as the basis of calculation, and it fol-

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lows that we now have about 40,000,000 acres, *not only inferior, but unfit for cultivation*. Yet our system is based on the hypothesis that there is no difference in the quality or value of the public
5 lands.

As an additional proof of the inferior quality of those *hundred and odd millions of refuse lands*, the fact may be stated, that it is dispersed through the oldest, as well as the more recently settled parts
10 of the States and Territories. It is not in such detached bodies, and so far removed from the improved and cultivated lands, as to impede its settlement and cultivation; on the contrary, were the soil good, its locality would afford unusual facilities in
15 both respects. It is wholly unreasonable to suppose that such land will sell for the same price at which land of the best quality can be purchased. But, if reduced to its fair relative value, much might be sold. Inferior lands, lying adjacent to those which
20 are improved and cultivated, would be valuable appendages to them, and would be purchased by present land proprietors. Other portions would be purchased by poor men, who have been driven from the more fertile tracts by men of large capital, and
25 by speculators.¹

¹Clay denied that unsold land was necessarily refuse or poor land. He said "it was not sold because there were not people to buy it," *viz.*, in such enormous quantities. See speech of January 28, 1832, *Register of Debates, etc.*, 22d Cong., 1st Sess., Vol. VIII,
30 pt. I, p. 1147.

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27. *Register of Debates, etc.*, 21st Congress, 1st Session (House of Representatives), Vol. VI, pt. 1. [Resolution of Mr. Hunt, of Vermont, December 17, 1829.]

5 Page 477.

Resolved, That the Committee on the Public Lands be instructed to inquire into the expediency of appropriating the nett annual proceeds of the sales of the public lands among the several States for the
10 purposes of education and internal improvement, in proportion to the representation of each in the House of Representatives.

28. *Register of Debates in Congress, Ibid.* [Speech of Mr. Pettis, of Missouri, January 14, 1830.]

15 Pages 524-525, 530.

... The people of the new States have a just ground of complaint, that . . . the government [has] lost sight of the chief object, that of settling the country, and looks mainly to the money that is to be made from
20 its own citizens. . . . If this (passage of Hunt's resolution) be done, it will be considered the interests of the people of the old States not only to relax their present system, but to adopt one more onerous. They will force their representatives here to act as
25 a set of heartless speculators, wringing from the poor cultivator of the soil the last cent of his earnings. It is in vain that gentlemen say to us, adopt this our system of distribution, and we will give you a liberal system of disposing of these lands. We know

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that when the system shall have been fixed upon us we cannot escape. . . . I look upon the system proposed to be established by this resolution, as an anti-emigration system—a system which is intended
5 to check the growth of the West. Has it come to this, sir? We have had American systems—anti-slavery systems—and systems, the Lord knows what; and now we are to have an anti-emigration system, to cripple the West, and to prevent the poor of the East
10 from going to the West, and cultivating the fertile lands of the West. Money is to be divided among them at home—they are to be educated at home, and, I suppose, starve at home. Do you fear the increased and increasing power of the West? I
15 hope not. That power is your power; it is the power of the whole country, and should not be feared by any part.

29. *American State Papers, etc., Public Lands*, Vol. VI, No. 915. [Application of Delaware
20 for a General Distribution of the Proceeds of the Sales of the Public Lands among the Several States. Report of a Committee of the General Assembly, January session, 1831, communicated to the Senate March 1, 1831.]

25 Pages 301–302.

[Reported]

That the citizens of this State view with deep solicitude the efforts lately made in the national legislature to deprive the Atlantic States of their

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just and equitable rights to the public lands of the Union—the right which they claim to hold in common with all the States, and which were asserted by and conceded to them at the laying of the foundation of the Constitution of the Union. It is an inheritance which they claim as the purchase of their treasures and of their blood, and is too highly appreciated by them to be relinquished without an equivalent, and too dearly bought to be wantonly
10 lavished away.

The citizens of Delaware have beheld, with pain and anxiety, attempts which have lately been made in Congress thus to deprive them of a conceded right, and dissipate the revenue derivable from those lands,
15 by forcing sales within a short period of time, and at mere nominal prices. They consider such a scheme as nothing less than a virtual alienation of their right, and a wanton sacrifice of their interest to the cupidity and avarice of speculators, many
20 of whom, it would seem, are as mercenary and unprincipled in their views as they are active and vociferous in their support of them. The people of Delaware look forward to the time when the national debt shall have been liquidated (to the
25 payment of which the revenue accruing from the sales of the public lands is pledged) as a suitable and auspicious period, after which the said revenue may be distributed among the several States of the Union for the purpose of extending the means of

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education, and thereby promoting the general welfare of the Union, strengthening its bands, and perpetuating its blessings. Your committee would therefore recommend the adoption of the following resolutions:

5 *Resolved by the senate and house of representatives of the State of Delaware in general assembly met,* That this legislature view with jealous eye every attempt to make partial distribution of the public lands of the Union among the States, whether by
10 direct grant to the State or by nominal sales at reduced prices to the citizens thereof.

Resolved, That, in the opinion of this general assembly, the revenue arising from the sales of public lands of the Union ought to be distributed
15 among the several States, for the purpose of extending means of education throughout the republic, as soon as the liquidation of the national debt shall warrant the same. . . .

30. *Register of Debates in Congress, 22d Congress, 1st Session (Senate), Vol. VIII, pt. 1.*
20 [Speech of Senator Benton in Opposition to the Distribution of Proceeds of Sales of Public Lands to all the States, June 28, 1832.]

• Pages 1151-1152.

25 . . . It¹ is not a system for the settlement of the internal improvement question. Its object is very different from that. It is a tariff bill; it is an ultra tariff measure; the strongest and boldest which

¹ This refers to Clay's distribution bill first reported April 16, 1832.

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has been attempted at this session. Tariff is stamped upon its face; tariff is emblazoned upon its borders; tariff is proclaimed in all its features. In the first place, it is intended, by diverting the land revenue
5 from the support of the Government, to create a vacuum in the treasury, which must be filled up by duties on imported goods. In the next place, it is intended, by keeping up the price of public lands, to prevent the emigration of laboring people from
10 the manufacturing States, and retain them where they were born, to work in the factories. This is the true character of the bill; a tariff bill; a land tariff bill; conceived according to the plan of Mr. Rush,¹ in 1828, and the memorial² of the New York Tariff
15 Convention in November of the last year. The Committee on Public Lands charged this design upon this bill; they quoted Mr. Rush, and the memorial of the New York Tariff Convention, to prove that character upon it; and their charge has
20 not been met. A feeble attempt at the vindication of Mr. Rush has fixed the design more firmly upon him. The Senator from Kentucky [Mr. Clay] informs the Senate that he suggested to Mr. Rush, before his report was communicated to Congress,
25 that it might be misunderstood, and that he had better omit what related to the public lands and manufactures. He suggested to him that it might be misunderstood! Yes, misunderstood! and that

¹ See document 35.

² *Ibid.* 6, 36.

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very phrase proves that it was understood! that the Senator of Kentucky understood it at the first blush precisely as every body else has understood it ever since. But the memorial of the New York Convention, which has been printed and laid upon our tables, that also is quoted by the Public Lands Committee, and no notice is taken of it by the Senator of Kentucky, nor by the Senator from Ohio, [Mr. Ewing]. Why do they omit to notice that memorial? Because it is full and plain, express and explicit, up to the mark, and direct and open in favor of preventing emigration to the West for the purpose of detaining the laboring population to work in the factories. There is no room for dispute about it, and, therefore, the Senators who undertake to answer the report of the Land Committee, prudently pass by that memorial, and the unanswerable argument founded upon it, although referred to it in the body of the report, and quoted verbatim in the appendix. The fact is clear; the conclusion irresistible; the character undeniable, that this land bill is a tariff measure; and that the new States are to be oppressed in the price of the public lands, for the purpose of preventing emigration and of supplying laborers to the factories.

31. *Register of Debates in Congress*, 21st Congress, 1st Session (Senate), Vol. VI, pt. 1. [Resolution of Senator Foot of Connecticut, December 29, 1829.]

Source Problems in United States History

Pages 3-4.

Resolved, That the Committee on Public Lands be instructed to inquire into the expediency of limiting for a certain period the sales of the public lands
5 to such lands only as have heretofore been offered for sale, and are subject to entry at the minimum price. And also, whether the office of Surveyor General may not be abolished without detriment to the public interest.¹

32. *Register of Debates, etc. Ibid.* [Speech of Senator Benton, of Missouri, December 30, 1829.]

Pages 4-5.

. . . The Senator from Connecticut shakes his head, but he cannot shake the conviction out of my
15 head, [said Mr. B.] that a check to Western emigration will be the effect of this resolution. The West is my country; not his. I know it; he does not. I know the practical effect of his resolution would be to check emigration to it; for who would remove
20 to a new country if it were not to get new lands. The idea of checking emigration to the West was brought forward openly at the last increase of the tariff. The Secretary of the Treasury gave it a place in his annual report upon the finances.² He
25 dwelt openly and largely upon the necessity of checking the absorbing force of this emigration, in order

¹See document 26 above for the amount of unsold land in December, 1828. Since the annual demand was only for about one million acres, Senator Foot declared that his resolution was justified,

30 ²See document 35 below.

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to keep people in the East to work in the manufactories. I commented somewhat severely upon his report at the time. I reprobated its doctrines. I did it in full Senate, in the current of an ardent debate, and no Senator contested the propriety of the construction which I had put upon the Secretary's words. No Senator stood up to say that emigration ought to be stopped for that purpose; but systematic efforts go on, the effect of which is to stop it. The sentiment has shown itself here in different forms, at various times, and has often been trampled under foot. The resolution now before us involves the same consequence, but in a new phraseology. What are the lands to which the gentleman would limit the sales? What are they that could be sold, if his resolution should take effect? Scraps; mere refuse; the leavings of repeated sales and pickings! Does he suppose that any man of substance would remove to the West for the purpose of establishing his family on these miserable remnants? They are worth something to those who are there, to farmers whose plantations they adjoin, to settlers who have made some improvement upon them; but they are not the object to attract emigration. The man that moves to a new country wants new lands; he wants first choice; he does not move for refuse, for the crumbs that remain after others are served. The reports of the registers and receivers show the character¹

¹ See document 26 above.

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of these seventy millions to which the gentleman refers, and which alone would be in market under his plan, to be such as I have represented it; the good land all picked out, inferior and broken tracts
5 only remaining, such as may be desirable for wood, or outlet, or to keep off a bad neighbor, to the farmer whose estate they adjoin, or to a poor family, but no object to induce emigrants to come from other States.

10 33. *Register of Debates, etc. Ibid.* [Speech of Senator Benton, January 18, 1830.]

Page 24.

... Manufactories are now realizing what was said by Dr. Franklin forty-five years ago, that they need
15 great numbers of poor people to do the work for small wages; that these poor people are easily got in Europe, where there was no land for them, but that they could not be got in America till the lands were taken up. These are the words of that wise
20 man, near half a century ago. The experience of the present day is verifying them. The manufactories want poor people to do the work for small wages; these poor people wish to go to the West and get land; to have flocks and herds—to have
25 their own fields, orchards, gardens, and meadows—their own cribs, barns, and dairies; and to start their children on a theatre where they can contend with equal chances with other people's children for honors and dignities of the country. This is what

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the poor people wish to do. How to prevent it—how to keep them from straying off in this manner—is the question. The late Secretary of the Treasury could discover no better mode than in the idea of
5 a bounty upon non-emigration, in the shape of protection to domestic manufactures! A most complex scheme of injustice, which taxes the South to injure the West, to pauperize the poor of the North! All this is bad enough, but it is a trifle, a lame, weak
10 and impotent contrivance, compared to the scheme which is now on the table. This resolution, which we are now considering, is the true measure for supplying the poor people which the manufactories need. It proposes to take away the inducement to
15 emigration. It takes all the fresh lands out of market. It stops the surveys, abolishes the office of Surveyor General, confines the settlements, limits the sales to the refuse of innumerable pickings; and thus annihilates the very object of attraction—
20 breaks and destroys the magnet which was drawing the people of the Northeast to the blooming regions of the West.

34. *Register of Debates, etc. Ibid.* [Speech of Senator Benton, January 19, 1830.]

25 Page 34.

. . . But, sir, there is another purpose to which it has been supposed the public lands can be applied, still more objectionable. I mean that suggested in a report from the Treasury Department, under the

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late administration, of so regulating the disposition of the public lands as to create and preserve, in certain quarters of the Union, a population suitable for conducting great manufacturing establishments.

■ It is supposed, sir, by the advocates of American System, that the great obstacle to the progress of manufactures in this country, is the want of that low and degraded population which infest the cities and towns of Europe, who, having no other
10 means of subsistence, will work for the lowest wages, and be satisfied with the smallest possible share of human enjoyment. And this difficulty it is proposed to overcome, by so regulating and limiting the sales of the public lands, as to prevent the drawing off
15 this portion of the population from the manufacturing States. Sir, it is bad enough that Government should presume to regulate the industry of man; it is sufficiently monstrous that they should attempt, by arbitrary legislation, artificially to adjust and
20 balance the various pursuits of society, and to 'organize the whole labor and capital of the country.' But what shall we say of the resort to such means for these purposes! What! create a manufactory of paupers, in order to enable the rich proprietors of woolen and cotton factories to amass
25 wealth? From the bottom of my soul do I abhor and detest the idea, that the powers of the Federal Government should ever be prostituted for such purposes. Sir, I hope we shall act on a more just

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and liberal system of policy. The people of America are, and ought to be for a century to come, essentially an agricultural people: and I can conceive of no policy that can possibly be pursued in relation
5 to the public lands, none that would be more 'for the common benefit of all the States' than to use them as the means of furnishing a secure asylum to that class of our fellow-citizens, who in any portion of that country may find themselves unable
10 to procure a comfortable subsistence by means immediately within their reach. I would by a just and liberal system convert into great and flourishing communities, that entire class of persons, who would otherwise be paupers in your streets, and out-
15 casts in society, and by doing so you will but fulfil the great trust which has been confided to your care.

35. *Reports of the Secretary of the Treasury of the United States*, Vol. II. [Report on the
20 Finances, December 8, 1827, by Richard Rush.]

Pages 405-406.

. . . There is an inducement to increase legislative protection to manufactures, in the actual internal
25 condition of the United States, which is viewed with an anxiousness belonging to its peculiar character and intrinsic weight. It is that which arises from the great extent of their unsold lands. The magnitude of the interests at stake in this part of

Source Problems in United States History

our public affairs ought not to appal us from approaching it. It should rather impel us to look at it with the more earnest desire to arrive at correct opinions on any course of legislation that may
5 affect, primarily or remotely, an interest so full of importance. The maxim is held to be a sound one, that the ratio of capital to population should, if possible, be kept on the increase. When this takes place, the demand and compensation for labor
10 will be proportionably increased, and the condition of the most numerous classes of community become improved. If the ratio of capital to population be diminished, a contrary state of things will be the result. The manner in which the remote lands of
15 the United States are selling and settling, whilst it may possibly tend to increase more quickly the aggregate population of the country, and the mere means of subsistence, does not increase capital in the same proportion. It is a proposition too plain
20 to require elucidation, that the creation of capital is retarded, rather than accelerated, by the diffusion of a thin population over a great surface of soil. Any thing that may serve to hold back this tendency to diffusion from running too far and too long into
25 an extreme, can scarcely prove otherwise than salutary. Moreover, the further encouragement of manufactures by legislative means would be but a counterbalance, and at most a partial one, to the encouragement to agriculture by legislative means,

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standing out in the very terms upon which the public lands are sold. It is not here intended to make the system of selling off the territorial domain of the Union a subject of any commentary, and still less
5 of any complaint. The system is interwoven beneficially with the highest interests and destiny of the nation. It rests upon foundations, both of principles and practice, deep and immoveable; foundations not to be uprooted or shaken. But our gravest
10 attention may, on this account, be but the more wisely summoned to the consideration of correlative duties, which the existence of such a system in the heart of the state imposes. It cannot be overlooked, that the prices at which fertile bodies of land may
15 be bought of the Government, under this system, operate as a perpetual allurements of their purchase. It must, therefore be taken in the light of a bounty, indelibly written in the text of the laws themselves, in favor of agricultural pursuits. Such it is in effect,
20 though not in form.

Perhaps no enactment of legislative bounties has ever before operated upon a scale so vast, throughout a series of years, and over the face of an entire nation, to turn population and labor into one particular channel, preferably to all others. The utmost
25 extent of protection granted to manufactures or commerce, by our statutes, collectively, since the first foundation of the Government, has been, in its mere effect of drawing the people of the United States

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into those pursuits, as nothing to it. No scale of imposts, no prohibitions or penalties, no bounties, no premiums, enforced or dispensed at the custom-house, has equalled it. It has served, and still
5 serves, to draw, in an annual stream, the inhabitants of a majority of the States, including amongst them at this day a portion (not small) of the western States, into the settlement of fresh lands, lying still farther and farther off. If the population of these
10 States, not yet redundant in fact, though appearing to be so, under this legislative incitement to emigrate, remained fixed in more instances, as it probably would by extending the motives to manufacturing labor, it is believed that the nation at large would
15 gain, in two ways: first, by the more rapid accumulation of capital; and next, by the gradual reduction of the excess of its agricultural population over that engaged in other vocations. It is not imagined that it would ever be practicable, even if it were de-
20 sirable, to turn this stream of emigration aside; but resources opened, through the influence of the laws, in new fields of industry, to the inhabitants of the States already sufficiently peopled to enter upon them, might operate to lessen, in some degree,
25 and usefully lessen, its absorbing force. The eye of legislation, intent upon the whole good of the nation, will look to each part, not separately as a part, but in conjunction with the whole. . . . Agriculture itself would be essentially benefited; the price

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of lands in all the existing States would soon become enhanced, as well as the produce from them, by a policy that would in anywise tend to render portions of their present population more stationary, by supplying new and adequate motives to their becoming so. And, as it is, the laws that have largely, in effect, throughout a long course of time, superinduced disinclinations to manufacturing labor, by their overpowering calls to rural labor, in the mode
10 of selling off the public domain, the claim of further legal protection to the former kind of labor, at this day, seems to wear an aspect of justice no less than of expediency.

36. *Register of Debates in Congress*, 22d Congress, 1st Session, Vol. VIII, pt. III. Appendix.
15 [Extract from the memorial of the New York Tariff Convention of November, 1831, presented to Congress, March 26, 1832.]

Page 126.

20 The last advantage which your memorialists propose to mention, as resulting from the establishment of domestic manufactures, is their effect in restraining emigration from the settled to the unsettled parts of the country. It is true, as a general
25 principle, that manufactures add to the wealth and population of the country, the whole amount of capital and labor to which they give employment; but, in the particular case of the United States, where large tracts of good unoccupied land are con-

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tinually for sale at low prices, it is probable, as your memorialists have already remarked, that some of the persons who, under the influence of the protecting policy, invest their capital and labor in manufactures, would, if this field of employment had not been opened to them at home, have emigrated to some of the unsettled parts of the country, and been occupied in clearing land. But when an individual can obtain a profitable market for his labor, at his own door, in the midst of his friends and kindred, and of objects that are connected with the agreeable associations of his early years, he will hardly be tempted to go in search of it to a distant unexplored wilderness. The increase of population which thus takes place in the manufacturing States, by creating an increased demand for provisions and materials, renders it in turn more advantageous for the agricultural States to extend their industry at home than to send off continually new colonies. In this way, the tide of emigration, without being wholly dammed up, is considerably checked throughout all the settled parts of the Union, and the population of all begins to put on a more consolidated shape.

37. *Register of Debates in Congress*, 22d Congress, 1st Session (Senate), Vol. VIII, pt. 1. [Speech of Senator Robinson of Illinois, July 3, 1832.]

Page 1174.

. . . But, say some gentlemen of the old States, if the price of public lands is reduced in the West,

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you take from us our population. This doctrine, I am sorry to say, has obtained a currency worthy a purer coin. And to what does it lead? To the benefit of the poor? No. To the advancement and settlement of the country, or sale of the unappropriated lands? No. To the increase of the revenue? No. To the happiness and prosperity of the people, especially the poorer classes? No. But I will tell you what it does do: it keeps
10 the poor and landless tenants and vassals to the wealth-sworn landlords; it opens to the land-jobber a wider field of speculation; it impoverishes and retards the settlement of the new States; it suppresses enterprise; it gives to the man, (it is
15 inexcusable, I suppose, to say manufacturer,) who wants the labor of his indigent neighbors and neighbors' children, the opportunity to secure it at his own price and his own calling.

38. *Register of Debates, etc. Ibid.* [Speech of Senator
20 Ewing of Ohio, June 28, 1832.]

Page 1142.

. . . It would seem as if, in the opinion of the honorable chairman of the Committee on Public Lands, the very acme of national prosperity consists in emigration, and that all legislation should
25 be aimed and directed to the encouragement of that sole object; and more especially that, for the benefit of the West, all other occupations, in other portions of the Union, should be discouraged or destroyed,

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that the inhabitants may be driven or allured into emigration. Hence, sir, the heavy anathemas pronounced against the report of Mr. Rush when at the head of the treasury, in which he urges the danger
5 of holding out new inducements to migration, lest it should draw off that portion of our population now engaged in manufactures, and make them agriculturists.

Now, sir, I, as a Western man,¹ concur in the principles contained in that branch of Mr. Rush's report; no matter how much they have been the subject of misrepresentation and abuse, they contain sound political and practical wisdom, and I am
10 willing to endorse for, and stand prepared to sustain them; but be it not forgotten that no idea is held forth of discouraging or checking the natural regular current of emigration; this was, according to his views, to remain unaltered and undisturbed, except as new fields for the enterprise and industry
15 of our citizens might direct them to other objects.

For the good of our country, our whole country, and all and each portion of our country, new and old, emigration has been and still is, rapid enough; it requires no new inducements; and except the continued improvement in the facilities of mutual inter-
25

¹ Senator Ewing argued also that a reduction in the price of lands would lower the value of land already taken up in Ohio, thus showing the rapidity with which this state tended to approach the economic status of eastern states. See Benton's comment, document 25, note 1.
30

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course, nothing to encourage, nothing to hasten it. So far as the West is concerned, certainly it requires nothing more. We are, there, essentially, an agricultural people; the products of the earth are raised
5 in superabundance, and a market is all that is wanting to give us independence, and even wealth. It would be madness in us, then, to desire that the workshops of the East, which purchase our produce, and supply us with their fabrics, should be broken
10 up, and that the men and capital which they employ should be induced, by bounties from the Government, to transfer themselves to our neighborhood, and become our rivals in agriculture. It is better for us that they should remain where they are, and
15 prosper, while they advance our prosperity as well as theirs, than that they should be transferred to our borders, at the expense and sacrifice of both.

39. *Memoirs of John Quincy Adams, Comprising Portions of his Diary, etc.*, Vol. IX, April 19, 1835.

20 Page 235.

. . . That debate [in the Senate, winter of 1829-30], was one of the earliest results of that coalition between the South and the West to sacrifice the manufacturing and free-labor interest
25 of the North and East to the slave-holding interest of the South, by the plunder of the public lands surrendered by the South to the new Western States. This was the secret of that combined and simultaneous attack of Hayne and Benton upon the

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Eastern section of the Union, so manfully and ably met and repelled by Webster and Sprague. The Jackson Administration had been formed upon this combination, and had drawn New York and Pennsylvania into its vortex. It is rather surprising that the sacrifice of the public lands was not entirely consummated. Benton was the founder of this project. Clay had built his reputation as a statesman and raised his ladder to the Presidency upon internal improvement of the Western country. He had connected himself with the free-labor interests of the North in this pursuit. Benton, who had been one of his partisans till then, saw he could supplant him by purchasing of the South the plunder of the public lands and selling to them the Western interest of internal improvement. This was the governing impulse of the joint movement of Hayne and Benton against the East and North in that debate. Why can I pursue this subject no further?

40. *Register of Debates in Congress*, 21st Congress, 1st Session, Vol. VI, pt. 1. [Speech of Senator Webster, January 20, 1830.]

Pages 39-40:

. . . I come now to that part of the gentleman's [Hayne] speech which has been the main occasion of my addressing the Senate. The East! the obnoxious, the rebuked, the always reproached East! We have come in, sir, on this debate, for even more than a common share of accusation and attack. If

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the honorable member from South Carolina was not our original accuser,¹ he has yet recited the indictment against us, with an air and tone of publick prosecutor. He has summoned us to plead on our arraignment; and he tells us we are charged with the crime of a narrow and selfish policy; of endeavoring to restrain emigration to the West, and, having that object in view, of maintaining a steady opposition to Western measures and Western interests. And the cause of all this narrow and selfish policy the gentleman finds in the tariff. I think he called it the accursed policy of the tariff. This policy, the gentleman tells us, requires multitudes of dependent laborers, a population of paupers, and that it is to secure these at home that the East opposes whatever may induce to Western emigration. Sir, I rise to defend the East. I rise to repel, both the charge itself, and the cause assigned for it. I deny that the East has, at any time, shown an illiberal policy towards the West. I pronounce the whole accusation to be without the least foundation in any facts, existing either now, or at any previous time. I deny it in the general, and I deny each and all its particulars. I deny the sum total, and I deny the detail. I deny that the East has ever manifested hostility to the West, and I deny that

¹ Webster was really replying to Benton's arguments, but he could not well attack him directly because his purpose was to make an alliance between the Northeast and West.

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she has adopted any policy that would have led her in such a course. But the tariff! the tariff!! Sir, I beg to say, in regard to the East that the original policy of the tariff is not hers, whether it be wise or
5 unwise. New England is not its author. If gentlemen will recur to the tariff of 1816, they will find that that was not carried by New England votes. It was truly more a Southern than an Eastern measure. And what votes carried the tariff of 1824? Cer-
10 tainly not those of New England. It is known to have been made a matter of reproach, especially against Massachusetts, that she would not aid the tariff of 1824; and a selfish motive was imputed to her for that also. In point of fact, it is true that
15 she did, indeed, oppose the tariff of 1824. There were more votes in favor of the law in the House of Representatives, not only in each of a majority of the Western States, but even in Virginia herself also, than in Massachusetts. It was literally forced
20 upon New England; and this shows how groundless, how void of all probability any charge must be, which imputes to her hostility to the growth of the Western States, as naturally flowing from a cherished policy of her own. But leaving all conjectures about
25 cause and motives, I go at once to the fact, and I meet it with one broad, comprehensive, and emphatic negative. I deny that in any part of her history, at any period of the Government, or in relation to any leading subject, New England has manifested

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such hostility as is charged upon her. On the contrary, I maintain that, from the day of the cession of the territories by the States to Congress, no portion of the country has acted with, either more liberality
5 or more intelligence, on the subject of the Western lands in the new States, than New England. This statement, though strong, is no stronger than the strictest truth will warrant. . . .

At the foundation of the constitution of these new
10 Northwestern States, [lies the celebrated Ordinance of 1787] we are accustomed, sir, to praise the lawgivers of antiquity; we help to perpetuate the fame of Solon and Lycurgus; but I doubt whether one single law of any lawgiver, ancient or modern, has
15 produced effects of more distinct, marked, and lasting character, than the ordinance of '87. That instrument was drawn by Nathan Dane, then, and now, a citizen of Massachusetts. . . . Now, sir, this great measure again was carried by the North and
20 by the North alone. There were, indeed, individuals elsewhere favorable to it: but it was supported as a measure, entirely by the votes of the Northern States. If New England had been governed by the narrow and selfish views now ascribed to her, this
25 very measure was, of all others, the best calculated to thwart her purposes. It was of all things, the very means of rendering certain a vast emigration from her own population to the West. She looked to that consequence only to disregard it. She

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deemed the regulation a most useful one to the States that would spring upon the territory, and advantageous to the country at large. She adhered to the principle of it perseveringly, year after year, 5 until it was finally accomplished.¹

41. *Register of Debates, etc. Ibid.* [Speech of Senator Benton, February 2, 1830.]

Page 99.

. . . I have already given the proof of the fact, that 10 the South is entitled to the honor of originating the clause against slavery in the Northwest Territory: the state of the votes upon its adoption also shows that she is entitled to the honor of passing it: there being but eight States present, four from each side 15 the Potomac, only one from New England, and all voting for it. This shows the great mistake which is committed in claiming the merit of that ordinance for the Northeast, and founding upon that claim a title to the gratitude of the Northwestern States.

20 42. *Register of Debates, etc. Ibid.* [Speech of Senator Webster, January 20, 1830.]

Page 40 [continued].

Leaving, then, sir, these two great and leading measures, and coming down to our own times, 25 what is there in the history of recent measures of Government that exposes New England to this ac-

¹ Compare documents 9 and 13 above, giving Senator Benton's views of the attitude of New England toward the West with respect to the Jay treaty and the Grayson land ordinance of 1785.

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cusation of hostility to Western interests? I assert, boldly, that in all measures conducive to the welfare of the West, since my acquaintance here, no part of the country has manifested a more liberal policy.

5 I beg to say, sir, that I do not state this with a view of claiming for her any special regard on that account. Not at all. She does not place her support of measures on the ground of favor conferred; far otherwise. What she has done has been con-

10 sonant to her view of the general good, and, therefore, she has done it . . . individuals¹ may have felt, undoubtedly, some natural regret at finding the relative importance of their own States diminished by the growth of the West. But New England has re-

15 garded that as in the natural course of things, and has never complained of it. Let me see, sir, any one measure favorable to the West which was opposed by New England, since the Government bestowed its attention to these Western improvements.

20 Select what you will, if it be a measure of acknowledged utility, I answer for it, it will be found that not only were New England votes for it, but that New England votes carried it. Will you take the Cumberland Road? Who has made that? Will you take

25 the Portland Canal? Whose support carried that bill? Sir, at what period beyond the Greek kalends could these measures, or measures like these, have been accomplished, had they depended on the votes

¹ Perhaps referring to such men as Timothy Pickering.

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of Southern gentlemen? Why, sir, we know that we must have waited till the constitutional notions of those gentlemen had undergone an entire change. Generally speaking, they have done nothing, and
5 can do nothing. All that has been effected has been done by the votes of reproached New England. I undertake to say, sir, that if you look to the votes on any one of these measures, and strike out from the list of ayes the names of New England members,
10 it will be found that in every case the South would then have voted down the West, and the measure would have failed. I do not believe that any one instance can be found where this is not strictly true. I do not believe that one dollar has been expended
15 for these purposes beyond the mountains, which could have been obtained, without the cordial co-operation and support from New England. Sir, I put the [question to the] gentleman (sic) to the West itself. Let gentlemen who have sat here ten years,
20 come forth and declare by what aids, and by whose votes, they have succeeded in measures deemed of essential importance to their part of the country. To all men of sense and candor, in or out of Congress, who have any knowledge on
25 the subject, New England may appeal, for refutation of the reproach now attempted to be cast upon her in this respect. I take liberty to repeat that I make no claim, on behalf of New England, or on account of that which I have not (sic) [*viz.*, now]

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stated. She does not profess to have acted out of favor: for it would not have become her so to have acted. She solicits for no special thanks; but, in the consciousness of having done her duty in these
5 things, uprightly and honestly, and with fair and liberal spirit. be assured she will repel, whenever she thinks the occasion calls for it, an unjust and groundless imputation of partiality and selfishness.

The gentleman alluded to a report of the late
10 Secretary of the Treasury, which, according to his reading or construction of it, recommended what he called the tariff policy, or a branch of that policy; that is, the restraining of emigration to the West, for the purpose of keeping hands at home to carry
15 on the manufactures. I think, sir, that the gentleman misapprehended the meaning of the Secretary, in the interpretation given to his remarks. I understood him only as saying, that, since the low price of lands at the West acts as a constant and standing
20 bounty to agriculture, it is, on that account, the more reasonable to provide encouragement. for manufactures. But, sir, even if the Secretary's observation were to be understood as the gentleman understands it, it would not be a sentiment borrowed
25 from any New England source. Whether it be right or wrong, it does not originate in that quarter.

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[Speech of Mr. Webster, January 27, 1830.]

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Page 65.

. . . I will tell the gentleman when, and how, and why, New England has supported measures favorable to the West. I have already referred to the
5 early history of the Government; to the first acquisition of the lands; to the original laws for disposing of them, and for governing the territories where they lie; and have shown the influence of New England men and New England principles in all
10 these leading measures. I should not be pardoned, were I to go over that ground again. Coming to more recent times, and to measures of a less general character, I have endeavored to prove that everything of this kind, designed for Western improvement, has
15 depended on the votes of New England; all this is true, beyond the power of contradiction.

And now, sir, there are two measures to which I will refer, not so ancient as to belong to the early history of the public lands, and not so recent as to
20 be on this side of the period when the gentleman charitably imagines a new direction may have been given to New England feeling and New England votes. These measures and the New England votes in support of them, may be taken as samples and
25 specimens of all the rest.

In 1820, (observe in 1820) the people of the West besought Congress for a reduction in the price of lands. In favor of that reduction, New England, with a delegation of forty members in the other

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House, gave thirty-three votes, and one only against it. The four Southern States, with fifty members, gave thirty-two votes for it, and seven against it. Again, in 1821, (observe, again, sir, the time) the law
5 passed for the relief of the purchasers of the public lands. This was a measure of vital importance to the West, and more especially to the Southwest. It authorized the relinquishment of contracts for lands which had been entered into at high prices,
10 and a reduction in the other case of not less than thirty-seven and one-half per cent, on the purchase money. Many millions of dollars—six or seven I believe, at least, probably much more—were relinquished by this law. On this bill, New England,
15 with her forty members, gave more affirmative votes than the four Southern States, with their fifty-two or fifty-three members.

43. *Register of Debates, etc.* [Speech of Senator Benton, February 2, 1830.]

20 Pages 95-97.

. . . Mr. Benton said he could not permit the Senate to adjourn, and the assembled audience of yesterday to separate, without seeing an issue joined on the unexpected declaration then made by the Senator from Massachusetts [Mr. Webster]—the declaration that the Northeast section of the Union had,
25 at all times, and under all circumstances, been the uniform friend of the West, the South inimical to it, and that there was no grounds for asserting the con-

Source Problems in United States History

trary. Taken by surprise, as I was, [said Mr. Benton] by a declaration so little expected, and so much in conflict with what I had considered established history, I felt it to be due to all concerned to
5 meet the declaration upon the instant. . . . The warmth of the moment prevented me from observing what was most obvious—namely, that the resolution under discussion was itself the most pregnant illustration of my side of the issue. It is a resolution
10 of direst import to the New States in the West, involving in its four-fold aspect, the stoppage of emigration to that region, the limitation of its settlement, the suspension of surveys, the abolition of the Surveyor's office, and the surrender of large portions
15 of Western Territory to the use and dominion of wild beasts; and, in addition to all this, connecting itself, in time and spirit, with another resolution in the other end of the capitol, for delivering up the public lands in the new States to the avarice of the
20 old ones, to be coined into gold and silver for their benefit. This resolution, thus hostile in itself, and aggravated by an odious connexion, came upon us from the Northeast, and was resisted by the South. Its origin, and its progress, was a complete exemplifi-
25 cation of the relative affections which the two Atlantic sections of the Union bear to the West. . . . Yet, I must say—the speech of yesterday [that of Webster] forces me to say it—that, in a political point of view, the population of New England does not

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stand undivided before me. A line of division is drawn through the mass, whether, 'horizontally,' leaving the rich and well-born above, the poor and ill-born below; or vertically, so as to present a section of each layer, is not for me to affirm. The division exists. On one side of it, we see friends who have adhered to us in every diversity of fortune, who have been with us in six troubles, and will not desert us in the seventh; men who were with us in '98, and in the late war; whose grief and joy rose and sunk with ours in the struggle with England; who wept with us over the calamities of the Northwest, and rejoiced in the splendid glories of the Southwest! On the other side, we see those who were against us in all these trials; who thought it unbecoming a moral and religious people to celebrate the triumphs of their country over its enemy, but quite becoming the same people, to be pleased at the victories of the enemy, over their country; who gave a dinner to him that surrendered Detroit. The line of the division exists. On one side of it stands the democracy of New England, to whom we give the right hand of fellowship at home and abroad; on the other side, all that stands opposed to that democracy, for whose personal welfare we have the best wishes; but with whom we must decline, as publicly as it was proffered, the honor of that alliance which was yesterday vouchsafed to the West, if not in direct terms, at least by an implication which no one misunderstood.

PROBLEM VI

VI.—The Slavery Problem

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I. THE HISTORICAL SETTING OF THE PROBLEM

NEGRO slaves were brought to Virginia in 1619 to aid in the heavy work of clearing the wilderness and raising tobacco for a growing market in Europe. As negroes had long been used by the Spanish in the West Indies in a similar way it was only natural that the English should seek their labor in the same way. Nor did any one imagine that there was any great moral or economic wrong involved. To capture a slave or to buy prisoners of war in Africa and sell them to American planters was to save the souls of heathens and at the same time put honest money into the pockets of enterprising traders.

As the years went by the tobacco plantations spread into Maryland and North Carolina and thousands of slaves became the chattels of the owners of these estates. And, moreover, the rice industry was introduced into South Carolina in 1694, and here again great numbers of hardy workmen were imperatively demanded. The poor blacks from Africa became the field hands of that colony. It was only a few decades before slave plantations were established along every river in the South from Maryland to Florida, and even in New England homes dusky hands were found to do the work of house servants.

But the owners of plantations became the ruling class in the South and constitutional arrangements were made to secure and perpetuate their power. Southern legisla-

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tures and courts were completely dominated by them. When the Middle and Southern colonies were drawn, about the middle of the eighteenth century, into the wars with the French along the Pennsylvania and Maryland frontiers, the small farmers and the more ambitious white men freed from their indentures became acquainted with the vast and fertile country beyond the Blue Ridge Mountains. When these men were released from the colors, many of them emigrated to the land of promise. They took few slaves with them.

During the same period hundreds of thousands of Scotch-Irish and German immigrants poured into Pennsylvania and, finding their way to the West barred by war or Indian resistance, they moved south and rapidly filled up the great back-country, already partly occupied by the native non-slaveholding population. Thus before 1776 there was in every plantation colony a large anti-slavery and isolated up-country which was naturally hostile to the dominant and aristocratic masters who controlled the legislatures to which they must appeal for the establishment of local government and courts of justice. The planters never yielded except upon full understanding that they were still to hold the reins of authority.

It was the back-country democracy, crying out for fairer representation in each of the Southern colonies, which gave impetus to the Revolution in that region. The masters also supported the same cause, but they were even more careful to guard their control of their legislatures. The new constitutions guaranteed the power and security of the masters everywhere. A minority of planters held perfect sway in every new state from Maryland to Georgia.

When the Federal constitution was drawn, the owners of slaves were able to insert in that document guarantees similar to those which they had exacted from their op-

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ponents in their own states. Only in Federal affairs it was arranged that slave states should have representation for three-fifths of their negroes; while in any scheme of direct taxation which congress might adopt, the slaves were to be taxed as property. Secure in their own legislatures and local courts, they had thus secured themselves against possible attack in the country as a whole.

But during the Revolution the idea that all men are free and equal gained such vogue that liberal-minded men everywhere came to oppose slavery. In New England and the Middle States this opposition took the form of gradual emancipation of the blacks. The guarantee of the Federal constitution, to which the masters made constant appeal, soon came to be looked upon in the East as a bad bargain. It had been a bargain of the representatives of the commercial interests of that section, who felt that they must have the support of all the states in order to compete with other nations in the world markets, and the planters whose staples were always in demand in Europe. The more democratic the East became the more distasteful became the bargain.

Slavery was, therefore, a national issue from the beginning of the present Federal government; and the fact that the owners of slaves, always a small minority, should control both their own states and the policy of the country at the same time made the issue tense. When, however, after 1816, manufacturing became the most important interest of the East and cotton-growing the absorbing business of the South, the natural antipathy of the sections was intensified. The owners of mills became masters of great groups of men just as the planters were masters of their environment. The former soon gained control of legislation in the East and the cotton-planters still held sway in the lower South and built new states to suit their ideals in Alabama and Mississippi. The

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manufacturers demanded of the Federal government protection against competition from Europe; the planters demanded of the same government free trade, which was vital to their interests as the great exporters of the country. The wonder of the historian is that arguments such as we find in the following pages did not lead to disruption of the Union and civil war long before 1861.

Under the stress of this economic, social and sectional conflict all the greater arguments for and against slavery were worked out and presented. The generous and humane views of Franklin and Jefferson, as expressed in Revolutionary times and in the emancipation law of Pennsylvania, gave way in the South about 1830 to dogmatic defense; while the mild opposition of eastern Quakers became fierce and ruthless attack of men like William Lloyd Garrison and Theodore Parker.

Yet on the solution of the problem depended the success of democratic government in the United States and consequently the best minds of both sections, as well as the most unreasoning ones, were constantly focused upon the problem. If the slaves were set free all Southerners wanted to know what could be done with the child-like blacks; if they were not set free all Northerners wanted to know how to check the growing and unceasing demands of the masters of slaves who must control the Federal policy or they would leave the Union. Thus the problem of sectional power became intricately entangled with the problem of democracy. There seemed to be no peaceful solution; and the Southerners drew the sword in 1861.

II. INTRODUCTIONS TO THE SOURCES

Statutes at Large of Pennsylvania. The Preamble. Vol. X, p. 67. The act of March 1, 1780.

This law, of which only the preamble is given here, was

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thought to be the work of Benjamin Franklin. Judge St. George Tucker, of Virginia, wrote in 1796 that such was his understanding. The language of the preamble suggests Franklin, but there is apparently no positive proof.

The Works of Thomas Jefferson, Federal edition, edited by Paul Leicester Ford, Vol. IV. (New York, 1904.)

This is the description of slavery which Jefferson published in Paris in 1784 in his famous *Notes on Virginia*.

St. George Tucker. *A Dissertation on Slavery with a Proposal for the Gradual Abolition of it in the State of Virginia*. (Philadelphia, 1796.)

A second edition of the pamphlet was published in New York in 1861. Jefferson wrote to the author in 1797: "But if something is not done, and soon done, we shall be the murderers of our own children."—*Works*, VIII, 335.

Thomas Roderick Dew. *A Review of the Debate in the Virginia Legislature, 1831-32*. (Richmond, 1833.)

Reprinted in 1849 at Richmond and again in Charleston, 1852, in *The Pro-Slavery Argument*. It was published, for the last time, I believe, in *Cotton is King and the Pro-Slavery Argument*, edited by E. N. Elliott. (Augusta, Georgia, 1860.) Dew was professor of history and political science in William and Mary College from 1826 to 1836, and president of the same institution from 1836 to 1846. He was called before a committee of the Virginia legislature in 1832 to give expert advice as to whether the state might safely abolish slavery. This book is his testimony as elaborated and published the next year. Few works have ever had a greater influence in shaping the course of the Southern states. Dew was, perhaps, the first public man who directly and openly attacked Jefferson on this subject. The legislature, which was at that time at the point of adopting a plan of gradual emancipation, abandoned the effort and the subject never came up again seriously in Virginia till after 1861.

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Henry Clay. *The Life and Speeches of Henry Clay*, edited by Leary and Getz, Vol. II. (Philadelphia, 1855.)

A speech delivered in the United States Senate on February 7, 1839.

The Works of William E. Channing, Vol. V. (Boston, 1841.)

A letter to Jonathan Phillips intended as a reply to Clay and to make his own position as a leader of the Unitarians clear.

The Works of John C. Calhoun, edited by Richard K. Crallé. Six vols. (New York, 1854.)

William Harper. *A Memoir on Slavery in the Pro-Slavery Argument*. (Charleston, 1852.)

Reprinted in *The Pro-Slavery Argument*.

Abraham Lincoln's Speeches, edited by J. B. McClure. (Chicago, 1891.)

The Barbarism of Slavery, a speech by Charles Sumner, delivered in the United States Senate, June 4, 1860. *Congressional Globe*, 66th Congress, 1st Session, 2590-92.

This speech, like its predecessor, *The Crime of Kansas*, was circulated by the hundreds of thousands in the North in the years just preceding the civil war.

The Life of Benjamin Morgan Palmer, by Thomas Cary Johnson. (Richmond, 1906.)

This contains a Thanksgiving sermon by Palmer, delivered in the First Presbyterian Church of New Orleans, November 30, 1860. It is a typical statement of the Southern attitude toward slavery and abolition for the period of 1850-60.

III. QUESTIONS AND SUGGESTIONS FOR STUDY

1. In what particulars do the doctrines of the preamble to the Pennsylvania emancipation law resemble and flow from the ideals of the Revolution?

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2. What was Jefferson's view of the influence of slavery on the master and his family? Of the right of the master to his slave?
3. How does St. George Tucker's doctrine compare with that of the Pennsylvania law?
4. From Tucker's point of view was it a duty of Virginia to emancipate her slave population? Why? And when should the state act?
5. What of the consistency of slavery and the professions of democracy?
6. Compare the theory of the purpose of government as found in Dew's argument with that of Jefferson and Tucker.
7. What was supposed to be the Divine will in all the earlier statements? What was Dew's teaching in this regard?
8. What does Dew think of the doctrine of the Declaration of Independence?
9. How does he regard slavery from the economic point of view? What would be the effect of sending ten thousand slaves to Africa each year?
10. What was his idea of the effect of slavery on the morals of the master and his family?
11. What was Dew's contention about the social and religious condition of the slave?
12. How does Henry Clay connect slavery with the rights of the states? With the Federal constitution?
13. What was Clay's prophecy as to the effect of emancipation? What does he think of the morality of uncompensated emancipation?
14. Did Channing accept Clay's notion that slavery was immune from attack because of the rights of the states? Why?
15. How did Channing regard Dew's claim that the master had a right to the labor of his slaves? Would Channing have agreed to the payment for slaves by the Federal government if they were to be set free? Why?
16. What was Channing's view of the fugitive slave clause of the Federal constitution? Why would he return a fugitive?
17. Does Channing agree with Dew's claim that the negro was happier as a slave than he would be as a free man? Why?

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18. What according to Channing was the greatest evil of slavery?
19. How does he meet the argument of Clay that the slave was property? Does he agree that there would be a race war in the South if emancipation were effected?
20. What are the assumptions of Calhoun's statement on slavery? What does he think of the abolition movement? Why?
21. What did Calhoun predict as the status of the negro in the South after emancipation? Of that of the white people?
22. Compare Harper's treatment of the slavery problem with that of Dew. With that of Channing.
23. What was Harper's idea as to the morals of the slavery system? As to the importance of slavery in the economy of the world?
24. What sort of military support did he think wise for the slave states? Why?
25. How did Lincoln regard the slavery problem? Why was he in so much doubt about a remedy?
26. What are the assumptions of Charles Sumner: *a*, As to the powers of Congress? *b*, As to the property rights of masters? Compare his assumptions with those of Calhoun.
27. What is the sanction of slavery according to Palmer? The duty of the master? Of the slave? The relation between the two?
28. Why was it sacrilege for any one to oppose slavery? How did he regard the election of Lincoln? Why did he make the comparison with the French revolution?
29. In view of this argument and the preceding declaration of Sumner was any solution of the slavery problem, short of armed intervention, possible?
30. Compare the views of Southern men of the period before 1830 with those of Southern leaders after that date. Likewise compare those of the Pennsylvania law and Channing with those of Sumner.

IV. The Sources

1. *Statutes at Large of Pennsylvania*, Vol. X. [The Preamble to the law of March 1, 1780.]

Page 67.

When we contemplate our abhorrence of that condition to which the arms of tyranny of Great Britain were exerted to reduce us, when we look back on the variety of dangers to which we have been exposed, and how miraculously our wants in many instances have been supplied and our deliverances wrought, when even hope and human fortitude have become unequal to the conflict, we are unavoidably led to a serious and grateful sense of the manifold blessings we have undeservedly received from the hand of that Being from whom every good and perfect gift cometh. Impressed with these ideas, we conceive that it is our duty, and we rejoice that it is within our power, to extend a portion of that freedom to others, which hath been extended to us, and a release from that thralldom, to which we ourselves were tyrannically doomed, and from which we have now every prospect of being delivered. It is not for us to enquire why, in the creation of mankind,

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the inhabitants of the several parts of the earth were distinguished by a difference in feature or complexion. It is sufficient to know that we are the work of an Almighty hand. We find in the distribution of the human species that the most fertile as well as the most barren parts of the earth are inhabited by men of complexions different from ours and from each other, from whence we may reasonably, as well as religiously, infer that He who placed them in their various situations hath extended equally His care and protection to all, and that it becometh not us to counteract His mercies.

We esteem it a peculiar blessing granted us that we are enabled this day to add one more step to universal civilization by removing as much as possible the sorrows of those who have lived in undeserved bondage and from which by the assumed authority of the Kings of Britain no effectual legal relief could be obtained. Weaned by a long course of experience from those narrow prejudices and partialities we had imbibed, we find our hearts enlarged with kindness and benevolence towards men of all conditions and nations and we conceive ourselves at this particular period extraordinarily called upon by the blessings which we have received to manifest the sincerity of our profession and to give substantial proof of our gratitude.

[The law which follows provides for the gradual abolition of slavery in Pennsylvania in the following manner:

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1. All children born of slaves shall be free after the passage of the act, but that such children shall remain as indentured servants to their masters till they reach the age of twenty-eight years; 2. all masters must register their slave children from date of the act on penalty of loss of their property rights in their young slaves, yet such masters shall be held for maintainance of slave children who may become a public charge; and 3, after passage of the act the free blacks shall enjoy the right of trial in the courts which white men enjoyed and they might acquire property as other people.]

2. *The Works of Thomas Jefferson*, Federal edition, edited by Paul Leicester Ford, Vol. IV.

Pages 82-84.

The whole commerce between master and slave is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading submission on the other. Our children see this and learn to imitate it; for man is an imitative animal. This quality is the germ of all education in him. From his cradle to his grave he is learning to do what he sees others do. If a parent could find no motive either in his philanthropy or his self-love for restraining the intemperance of passion towards his slave, it should always be a sufficient one that his child is present. But generally it is not sufficient. The parent storms, the child looks on, catches the lineaments of his wrath, puts on the same airs in the circle of smaller slaves, gives a loose rein to the worst of passions and thus nursed, edu-

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cated and daily exercised in tyranny, can not but be stamped by it with odious peculiarities.

The man must be a prodigy who can retain his manners and morals undepraved by such circumstances. And with what execrations should the statesman be loaded who, permitting one half the citizens thus to trample on the rights of the other, transforms those into despots and these into enemies, destroys the morals of the one part and the amor patriæ of the other. For if a slave can have a country in this world, it must be any other in preference to that in which he is born to live and labor for another: in which he must lock up the faculties of his nature, contribute as far as depends on his individual endeavors to the evanishment of the human race or entail his own miserable condition on the endless generations proceeding from him. With the morals of the people, their industry is also destroyed. For in a warm climate, no man will labor for himself who can make another labor for him. This is so true that, of the proprietors of slaves, a very small proportion are ever seen to labor. And can the liberties of a nation be thought secure, when we have removed their only firm basis, a conviction in the minds of the people that these liberties are of the gift of God? That they are not to be violated but with his wrath? Indeed I tremble for my country when I reflect that God is just: that his justice can not sleep forever: that considering numbers, nature

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and natural means only, a revolution of the wheel of fortune, an exchange of situation is among possible events: that it may become probable by supernatural interference!

5 The Almighty has no attributes which can take side with us in such a contest. But it is impossible to be temperate and to pursue this subject through the various considerations of policy, of morals, of history natural and civil. We must be contented
10 to hope they will force their way into every one's mind. I think a change already perceptible, since the origin of the present revolution. The spirit of the master is abating, that of the slave rising from the dust, his condition mollifying, the way, I hope,
15 preparing, under the auspices of heaven, for a total emancipation; and that this is disposed, in the order of events, to be with the consent of the masters, rather than by their extirpation.

3. St. George Tucker: *A Dissertation on Slavery with a Proposal for the Gradual Abolition of it in the State of Virginia.* [1796.]
20

Pages 1-10.

Among the blessings which the Almighty hath showered down on these states, there is a large portion of the bitterest draught that ever flowed from
25 the cup of affliction. Whilst America hath been the land of promise to Europeans and their descendants, it hath been the vale of death to millions of the wretched sons of Africa. The genial light of liberty,

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which hath here shone with unrivalled lustre on the former, hath yielded no comfort to the latter; but to them hath been a pillar of darkness whilst it hath conducted the former to the most enviable state of human existence. Whilst we were offering up vows at the shrine of Liberty and sacrificing hecatombs upon her altars; whilst we swore irreconcilable hostility to her enemies and hurled defiance in their faces; whilst we adjured the God of Hosts to witness our resolution to live or die, and imprecated curses on their heads who refused to unite with us in establishing the empire of freedom, we were imposing upon our fellow men, who differ in complexion from us, a *slavery* ten thousand times more cruel than the utmost extremity of those grievances and oppressions of which we complained.

Such are the inconsistencies of human nature; such the blindness of those who pluck not the beam out of their own eyes, whilst they can espy a mote in the eyes of their brother; such that partial system of morality which confines rights and injuries to particular complexions; such the effect of that self-love which justifies or condemns, not according to principles, but to the agent. Had we turned our eyes inwardly when we supplicated the Father of Mercies to aid the injured and oppressed; when we invoked the Author of Righteousness to attest the purity of our motives and the justice of our cause; and implored the God of battles to aid our exertions

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in its defence, should we not have stood more self convicted than the contrite publican! Should we not have left our gift upon the altar that we might first be reconciled to our brethren whom we held in bondage? Should we not have loosed their chains and broken their fetters? Or, if the difficulties and dangers of such an experiment prohibited the attempt during the convulsions of a revolution, is it not our duty to embrace the first moment of constitutional health and vigor to effectuate so desirable an object and to remove from us the stigma with which our enemies will never fail to upbraid us, nor our consciences to reproach us?

To form a just estimate of this obligation, to demonstrate the incompatibility of a state of slavery with the principles of our government, and of that revolution upon which it is founded, and to elucidate the practicability of its total, though gradual, abolition, it will be proper to consider the nature of slavery, its properties, attendants and consequences in general; its rise, progress and present state not only in this commonwealth, but in such of our sister states as have either perfected or commenced the great work of its extirpation; with the means they have adopted to effect it and those which the circumstances and situation of our country may render it most expedient for us to pursue, for the attainment of the same noble and important end.

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[Then follows a brief history of slavery and the slave trade which concludes, page 88, with a plan of gradual abolition similar to that which Pennsylvania had adopted.]

4. Thomas Roderick Dew: *A Review of the Debate*
5 *in the Virginia Legislature, 1831-32.* [Rich-
mond, 1833.] In Pro-Slavery Argument. [. . .
indicate omitted sentences and sometimes
pages.]

Pages 205-460.

- 10 Slavery was established and sanctioned by Divine
Authority, among even the elect of Heaven—the
favored children of Israel. Abraham, the founder
of this interesting nation and the chosen servant of
the Lord, was the owner of hundreds of slaves; that
15 magnificent shrine, the temple of Solomon, was
reared by the hands of slaves. Egypt's venerable
and enduring piles were reared by similar hands.
Slavery existed in Assyria and Babylon. The ten
tribes of Israel were carried off in bondage to the
20 former by Shalmanezzer and the two tribes of Judah
were subsequently carried in triumph by Nebuchad-
nezzar to beautify and adorn the latter. . . . So that,
looking to the whole world, we may even now with
confidence assert that slaves, or those whose con-
25 dition is infinitely worse, form by far the largest
portion of the human race.

The character of government, in spite of all its
forms, depends more on the condition of property
than on any one circumstance beside. The relations

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which the different classes of society bear towards each other, the distinction into high and low, noble and plebeian, in fact, depend almost exclusively upon the state of property. It may with truth be affirmed that the exclusive owners of property ever have been, ever will, and perhaps ever ought to be the virtual rulers of mankind. If then in any age or nation, there should be but one species of property, and that should be exclusively owned by a portion of citizens, that portion would become inevitably the masters of the residue. . . . A revolution in the state of property is always a premonitory symptom of a revolution in government and in the state of society and without the one you can not meet with permanent success in the other. The slave of southern Europe could never have been emancipated except through the agency of commerce and manufactures and the consequent rapid rise of cities, accompanied with a more regular and better protected industry. . . . In the same way we shall show that if the slaves of our southern country shall ever be liberated and suffered to remain among us, with their present limited wants and longing desire for a state of idleness, they would fall inevitably, by the nature of things, into a state of slavery from which no government could rescue them. The state of property, then, may fairly be considered a very fruitful source of slavery. . . .

Well, then, might we have concluded from the

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fact that slavery was the necessary result of the laws of mind and matter, that it marked some benevolent design and was intended by our Creator for some useful purpose. Let us inquire, then, what that useful purpose is and we have no hesitation in affirming that slavery has been perhaps the principal means for impelling forward the civilization of mankind. Without its agency, society must have remained sunk in that deplorable state of barbarism and wretchedness which characterized the inhabitants of the western world when discovered by Columbus. . . . Slavery gradually fells the forest and thereby destroys the haunts of wild beasts. It gives rise to agricultural production and thereby renders mankind less dependent on the precarious and diminishing production of the chase. It thus gradually destroys the roving and unquiet life of the savage. It furnishes a home and binds him down to the soil. It converts the idler and the wanderer into the man of business and the agriculturist. . . .

We have now finished the first principal division of our subject in which we have treated of the origin of slavery in ancient and modern times. . . . We have considered it indispensably necessary to point out the true sources of slavery and the principles upon which it rests in order that we might appreciate fully the value of those arguments based upon the principles that all men are born equal, that slavery in the abstract is wrong, that the slave has a natural

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right to regain his liberty and so forth—all of which doctrines were most pompously and ostentatiously put forth by some of the abolitionists in the Virginia Legislature.¹ . . . We shall now proceed to the second great division of our subject and inquire seriously and fairly whether there be any means by which we may get rid of slavery.

[Here follows a strong argument to show the impossibility of abolishing slavery without deportation and that deportation, according to the so-called Malthus law of population, would only result in multiplying young negroes as fast as any southern state could afford to ship the freedmen away.]

After the United States abolished the slave trade, the price of adults rose very considerably; greater attention was, consequently, bestowed on their children and now nowhere is the African female more prolific than she is in Louisiana, and the climate of no one of the southern states is supposed to be more favorable to the rearing of her offspring. For a similar reason the slaves in Virginia multiply more rapidly than in most of the southern states; the Virginians can raise cheaper than they can buy. In fact it is one of their greatest sources of profit. In many of the other slave-holding states this is not the case and consequently the same care is not taken to encourage matrimony and the rearing of children.

¹ The Virginia Legislature of 1831-32 which debated at great length the proposition to abolish slavery.

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For a similar reason in ancient times few slaves were reared in populous districts and large towns, these being supplied with slaves raised at a distance or taken in war at a cheaper rate than they could
5 be raised. The comparison is shocking, says Hume, the historian, but in the capital, near all great cities, in all populous, rich, industrious provinces, few cattle are bred. Provisions, lodging, attendance, labor are there dear and men find their accounts better in
10 buying the cattle after they come to a certain age from the remote and cheaper countries. [It was the same with human beings argued Dew.] And it is thus we see everywhere that the spring of population accommodates itself to the demand for human
15 beings and becomes inert or active in proportion to the value of the laborer and the small or great expense of rearing him.

[To the proposition that uncompensated abolition might be resorted to, Dew makes the reply, 384-86]:

20 It is contended that property is the creature of civil society and is subject to action, even to destruction. . . . To these doctrines we call the serious attention of the whole slave-holding population of our Union. It is time indeed for Achilles to rise
25 from his inglorious repose and buckle on his armor when the enemy are about to set fire to the fleet. This doctrine, absurd as it may seem in the practical application made by the speaker, will be sure to be-

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come the most popular with those abolitionists in Virginia who have no slave property to sacrifice.

The doctrine of these gentlemen, so far from being true in its application to slavery, is not true in theory. The great object of government is the protection of property. From the days of the patriarchs down to the present time, the great desideratum has been to find out the most efficient mode of protecting property. There is not a government at this moment in Christendom whose peculiar practical character is not the result of the state of property. No government can exist which does not conform to the state of property; it can not make the latter conform entirely to the government. An attempt to do it would and ought to revolutionize any state. There is slave property of the value of \$100,000,000 in the state of Virginia and it matters but little how you destroy it, whether by the slow process of the cautious practitioner or with the frightful despatch of the self-confident quack . . . ; when it is gone, no matter how, the deed will be done and Virginia will be a desert. . . .

It is said that slavery is wrong, in the abstract at least, and contrary to the spirit of Christianity. To this we answer as before, that any question must be determined by its circumstances, and if, as really is the case, we can not get rid of slavery without producing a greater injury to both the masters and slaves, there is no rule of conscience or revealed law

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of God which can condemn us. The physician will not order the spreading cancer to be extirpated, although it will eventually cause the death of his patient, because he would thereby hasten the fatal
5 issue. So, if slavery had commenced even contrary to the laws of God and man, and the sin of its introduction rested on our heads, and it was even carrying forward the nation by slow degree to final ruin; yet, if it were certain that an attempt to remove it
10 would only hasten and heighten the final catastrophe—that it was in fact a *vulnus immedicabile* on the body politic which no legislation could safely remove, then we would not only not be bound to attempt the extirpation, but we would stand guilty
15 of a high offense in the sight of both God and man if we should rashly make the effort. But the original sin of introduction rests not on our heads and we shall soon see that all those dreadful calamities which the false prophets of our day are pointing to will
20 never, in all probability, occur. With regard to the assertion that slavery is against the spirit of Christianity, we are ready to admit the general assertion but deny most positively that there is anything in the Old or New Testament which would go to show
25 that slavery, when once introduced, ought at all events to be abrogated or that the master commits any offense in holding slaves. . . .

But it is further said that the moral effects of slavery are of the most deleterious and hurtful kind;

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and as Mr. Jefferson has given the sanction of his great name to this charge, we shall proceed to examine it with all that respectful deference to which every sentiment of so pure and philanthropic
5 a heart is justly entitled. "The whole commerce between master and slave is a perpetual exercise of the most boisterous passions; the unremitting despotism on the one part and degrading submission on the other" [and so on as given above in Jefferson's opinion of slavery].
10 son's opinion of slavery].

Now we boldly assert that the fact does not bear Mr. Jefferson out in his conclusions. . . . But is not his master sometimes kind and indulgent to his slaves? Does he not mete out to them, for faithful
15 service, the reward of his cordial approbation? Is it not his interest to do it? And when thus acting humanely and speaking kindly where is the child, the creature of imitation, that he does not look on and learn? . . . Instead of being reared a selfish and
20 contracted being, with naught but self to look to, he acquires a more exalted benevolence, a greater generosity and elevation of soul and embraces for the sphere of his generous actions a much wider field. Look to the slave-holding population of our
25 country and you everywhere find them characterized by noble and elevated sentiments, by humane and virtuous feelings. We do not find among them that cold, contracted, calculating selfishness which withers and repels everything around it and lessens or de-

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stroys all the multiplied enjoyments of social intercourse. . . .

Is it not a fact, known to every man in the South, that the most cruel masters are those who have been unaccustomed to slavery. It is well known that northern gentlemen who marry southern heiresses are much severer masters than southern gentlemen. And yet if Mr. Jefferson's reasoning were correct, they ought to be milder. In fact it follows from his reasoning that the authority which the father is called on to exercise over his children must be seriously detrimental; and yet we know that this is not the case. . . . There may be cruel masters and there are cruel and unkind fathers, too, but both the one and the other make all those around them shudder with horror.

Let us now look a moment to the slave and contemplate his position. Mr. Jefferson has described him as hating rather than loving his master and as losing, too, all that *amor patriæ* which characterizes the true patriot. We assert again that Mr. Jefferson is not borne out by the fact. We are well convinced that there is nothing but the mere relations of husband and wife, parent and child, brother and sister, which produce a closer tie than the relation of master and servant. We have no hesitation in affirming that throughout the whole slave-holding country the slaves of a good master are his warmest, most constant and most devoted friends; they have

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been accustomed to look up to him as their supporter, director and defender.

In the debate in the Virginia Legislature¹ no speaker insinuated even, we believe, that the slaves in Virginia were treated unkindly; and all, too, agree that they are most abundantly fed; and we have no doubt that they form the happiest portion of our society. A merrier being does not exist on the face of the globe than the negro slave of the United States. Even Captain Hall himself, with his thick crust of prejudice, is obliged to allow that they are happy and contented and the master is much less cruel than is generally imagined. Why then, since the slave is happy and happiness is the great object of all animated creation, should we endeavor to disturb his contentment by infusing into his mind a vain and indefinite desire for liberty—a something which he can not comprehend and which must inevitably dry up the very sources of his happiness. . . .

Let the wily philanthropist but come and whisper into the ears of such a slave that his situation is degrading and his lot a miserable one; let him but light up the dungeon in which he persuades the slave that he is caged, and that moment, like the serpent that entered the garden of Eden, he destroys his happiness and his usefulness. We can not, therefore, agree with Mr. Jefferson in the opinion that slavery makes the unfeeling tyrant and ungrateful

¹ In the debate of 1831-32, already mentioned.

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dependent. And in regard to Virginia especially, we are almost disposed, judging from the official returns of crimes and convictions, to assert, with a statesman who has descended to his tomb,¹ that the
5 whole population of Virginia, consisting of three castes of free white, free colored and slave colored population, is the soundest and the most moral of any other, according to numbers, in the whole world.

5. *The Life and Speeches of Henry Clay*, Vol. II.

10 [The clearest statement of the opinions of Clay on the subject of slavery that has been found.]

Pages 408, 410.

Why are the slave States wantonly and cruelly assailed? Why do the abolition presses teem with
15 publications tending to excite hatred and animosity on the part of the inhabitants of the free States against those of the slave States? Why is Congress petitioned? The free States have no more power or right to interfere with institutions in the slave
20 States, confined to the exclusive jurisdiction of those States, than they would have to interfere with institutions existing in any foreign country. . . .

What would be thought of the formation of societies in the slave States, the issuing of violent and inflammatory tracts, and the deputation of missionaries, pouring out impassioned denunciations against
25 institutions under the exclusive control of the free States? Is their purpose to appeal to our under-

¹ William B. Giles.

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standings, and to actuate our humanity? And do they expect to accomplish that purpose by holding us up to the scorn and contempt and detestation of the people of the free States, and the whole civilized world? The slavery which exists among us is our affair not theirs; and they have no more just concern with it than they have with slavery throughout the world. Why not leave it to us, as the common constitution of our country has left it, to be dealt with, under the guidance of Providence, as best we may or can?

The next obstacle in the way of abolition arises out of the fact of the presence in the slave States of three millions of slaves. They are there, dispersed throughout the land, part and parcel of our population. They were brought into the country originally under the authority of the parent government whilst we were colonies and their importation was continued in spite of all the remonstrances of our ancestors. . . . The slaves are here; no practical scheme for their removal or separation from us has been yet devised or proposed; and the true inquiry is, what is best to be done with them. In human affairs we are often constrained, by the force of circumstances and the actual state of things, to do what we would not do if that state of things did not exist. The slaves are here, and here they must remain, in some condition; and, I repeat, how are they to be best governed? What is best to be done for

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their happiness and our own? In the slave States the alternative is that the white man must govern the black, or the black govern the white. . . . An immediate abolition of slavery, as these ultra abolitionists propose, would be followed by a desperate struggle for immediate ascendancy of the black race over the white race, or rather it would be followed by instantaneous collisions between the two races, which would break out into a civil war that would end in the extermination or subjugation of the one race or the other. In such an alternative, who can hesitate? Is it not better for both parties that the existing state of things should be preserved instead of exposing them to the horrible strifes and contests which would inevitably attend an immediate abolition? This is our true ground of defence for the continued existence of slavery in our country. It is that which our revolutionary ancestors assumed. It is that which, in my opinion, forms our justification in the eyes of all Christendom. . . .

A third impediment to the immediate abolition is to be found in the immense amount of capital which is invested in slave property. The total number of slaves in the United States, according to the last enumeration of the population, was a little upwards of two millions. Assuming their increase at a ratio of five per cent. per annum, their present number would be three millions. Estimating slaves at \$400 each their total value is, then, twelve hun-

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dred millions of dollars. This property is diffused throughout all classes and conditions of society. It is owned by widows and orphans, by the aged and infirm as well as by the sound and vigorous. It is the subject of mortgages, deeds of trust and family settlements. . . . And now it is rashly proposed, by a single fiat of legislation, to annihilate this immense amount of property! To annihilate it without indemnity and without compensation to its owners! Does any considerate man believe it to be possible to effect such an object without convulsion, revolution and bloodshed?

6. *The Works of William E. Channing*, Vol. V.

Pages 16-61.

I claim the right of pleading the cause of the oppressed, whether he suffer in this country or another. I utterly deny that a people can screen themselves behind their nationality from the moral judgment of the world. Because they form themselves into a state, and forbid within their bounds a single voice to rise in behalf of the injured; because they crush the weak under the forms of law, do they thereby put a seal on the lips of foreigners? Do they disarm the moral sentiment of other states? Is this among the rights of sovereignty, that a people, however criminal, shall stand unreprieved?

In consequence of the increasing intercourse and intelligence of modern times, there is now erected in the civilized world, a grand moral tribunal before

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which all communities stand and must be judged. . . . Before this, slave-holding communities are arraigned and must answer. The friends of justice, liberty and humanity accuse them of grievous
5 wrongs. It is vain to talk of the prescription of two hundred years. Within this space of time great changes have taken place in the code by which the commonwealth of nations passes sentence. The doctrine of human rights has been expounded. The
10 right of the laborer to wages, the right of every innocent man to his own person, the right of all to equity before the laws, these are no longer abstractions of speculative visionaries, no longer innovations, but the established rights of humanity. Before
15 the tribunal of the civilized world, and the higher tribunal of Christianity and of God, the slave-holder has to answer for stripping his brother of these recognized privileges and immunities of a man. Multitudes, on both sides of the ocean, looking above
20 the distinction of nations, standing on the broad ground of a common nature, protest in the face of heaven and earth against the wrong inflicted on their enslaved brother. Let the South understand that it is not your voice or mine, or that of a small
25 knot of enthusiasts, which they have to silence. You and I are nothing, but as we represent those great principles of justice and charity with which the human heart is everywhere beginning to beat. Everywhere the slave-holder is accused; everywhere he is judged.

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. . . A few individuals, given to a bad course, might be overlooked for their insignificance. But when a community, openly, by statutes, by arms, adopts and upholds an enormous wrong, then good men, through the earth, are bound to unite against it in stern, solemn remonstrance. The greater the force combined to support an evil, the greater the force needed for its subversion. Crime is comparatively weak until it embodies and "sanctifies" itself in institutions. Individuals, seizing on and enslaving their brethren, would be put down by the spontaneous, immediate reprobation of society. It is the perpetration of this wrong by communities which makes it formidable; and, I confess, that here, if anywhere, a justification may be found for organized associations against slavery. This evil rests on associated strength, on the prostitution of the powers of the state. . . . I feel that slavery, entrenched behind institutions, is, on that very account, to be assailed with all the weapons of reason, of moral suasion, of moral reprobation, which good men can wield. Less mercy should be shown it because it is an institution.

. . . I have now considered one important relation of the Free States to slavery. I now proceed to another. The constitution requires the Free States to send back to bondage the fugitive slave. Does this show that we have no concern with the domestic

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institutions of the South? That the guilt of them, if such there be, is wholly theirs and in no degree ours? This clause makes us direct partakers of the guilt; and, of consequence, we have a vital interest in the matter of slavery. I know no provision of the constitution at which my moral feelings revolt, but this. Has not the slave the right to flee from bondage? Who among us doubts it? Let any man ask himself how he should construe his rights, were he made a slave; and does he not receive an answer from his own moral nature, as bright, immediate, and resistless as lightning? And yet we of the Free States stop the flying slave and give him back to bondage! It does not satisfy me to be told that this is a part of that sacred instrument, the constitution, which all are solemnly bound to uphold. No charter of man's writing can sanctify injustice or repeal God's eternal law. I cannot escape the conviction that every man who aids the restoration of the flying slave is a wrong-doer, though this is done by our best and wisest men with no self reproach. . . . The slave goes back not merely to toil and sweat for his master as before. He goes to be lacerated for the offense of flying from oppression. For hardly any crime is the slave so scored and scarred as for running away; and for every lash that enters his flesh, we of the Free States, who have given him back, must answer.

I know perfectly well how these views will be re-

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ceived at the North and South. Some will call me a visionary while others will fix on me a harder name. But I look above scoffers and denouncers to that pure, serene, almighty Justice which is enthroned in Heaven and inquire of God, the Father of us all, whether he approves the surrender of the flying slave. I shall be charged with irreverence toward the fathers of the Revolution, the framers of our glorious national charter. But I reply that, great as they were, they were fallible and that the progress of opinion since their day seems to me to have convicted them of error in the matter now in hand. . . . If I am right, the truth which I speak, however questioned now, will not have been spoken in vain. To-day is not Forever. The men who now scorn or condemn are not to live forever. Let a few years pass and we shall all have vanished and other actors will fill the stage and the despised and neglected truths of this generation will become the honored ones of the next. . . .

It is vain to say that the slave suffers less than other laborers. We have no right to inflict a suffering, greater or less, on an innocent fellow-creature. Injustice is injustice, be the extent of its influence ever so confined. Were one of our governments, by an act of usurpation, to abridge the free motions and the rights of the laboring class, would it be a mitigation of the wrong that the laborer still exceeded in privileges and means of pleasure the serfs

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of Russia? It is no excuse for keeping a man in the dust that you throw him better food than he can earn by his free industry. Be just before you are generous. The lenity which quiets you in wrong-
5 doing becomes a crime. Do not boast of your humanity to those whom you own when it is a cruel wrong to be their owner. Some highwaymen have taken pride in the gentlemanly, courteous style in which they have eased the traveller of his purse.
10 They have given him back a part of the spoils that he might travel comfortably home. But they were robbers still. A criminal relation can not be made virtuous by the mode of sustaining it. Cæsar was a clement dictator but usurpation did not, there-
15 fore, cease to be a vice.

It is no excuse for taking possession of a man that we can make him happier. We are poor judges of another's happiness. He was made to work it out for himself. Our opinion of his best
20 interests is particularly to be distrusted when our own interest is to be advanced by making him our tool. Especially if, to make him happy, we must drive him as a brute, subject him to the lash, it is plainly time to give up our philanthropic efforts and
25 let him seek his good in his own way. . . . Pain as pain is nothing compared with pain when it is wrong. A blow given me by accident may fell me to the earth; but after all it is a trifle. A slight blow, inflicted in scorn or with injurious intent, is an evil

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which, without aid from my principles, I could not bear. Let God's providence confine me to my room by disease and I more than submit, for in his dispensations I see parental goodness seeking my
5 purity and peace. But let man imprison me, without inflicting disease, and how intolerable my narrow bounds. . . . Anything can be borne but the will and power of the selfish, unrighteous man.

It will be said that the slave has nothing of this
10 consciousness of his wrongs which adds such weight to his sufferings. He has no self-respect, we hear, to be wounded when he is lashed. To him, as to the ox, a blow is but a blow. And is this an apology for slavery, that it destroys all sense of wrongs,
15 blunts the common sensibilities of human nature, makes man tamer than the nobler animals under inflicted pain? But it is not true that the spirit of man is wholly killed in the slave. The moral nature never dies. He often feels a wrong in the violence
20 which he can not resist. He has often bitter hatred towards the cruel overseer. He ponders in secret over his oppressed lot. There are deep groans of conscious injury and revenge, which, though smothered by fear, do not less agonize the soul.

25 . . . Still, I do not charge cruelty on slavery as its worst evil. The great evil is the contempt and violation of human rights, the injustice which treats man as a brute and which breaks his spirit to make him a tool. It is the injustice which denies him

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the means of improvement, which denies him scope for his powers, which dooms him to an unchangeable lot, which robs him of the primitive rights of human nature, that of bettering his outward and
5 inward state. It is the injustice which converts his social connections into a curse. Here, perhaps, is the influence of slavery most blighting. Our social connections are intended by God to be among our chief means of improvement and happiness; and a
10 system which wars with these is the most cruel outrage on our nature. Other men's chief relations are to wife and children, to brother and sister, to beings endeared by nature and who awaken the heart to tenderness and faithful love. The slave's chief re-
15 lation is to his owner, to the man who wrongs him. This it is which, above all things, determines his lot and this infuses poison into all his other social connections. This destroys the foundation of domestic happiness by sullyng female purity, by ex-
20 tinguishing in woman the sense of honor. This violates the sanctity of the marriage bond. This tears the wife from the husband or condemns her to insult, perhaps, laceration in his sight. This takes from the parent his children. His children
25 belong to another and are disposed of for another's gain. Thus, God's great provisions for softening, refining, elevating human nature are thwarted. Thus social ties are liable to be turned into bitterness and wrong. . . .

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I have thus attempted to show that there is nothing in the mitigating circumstances of slavery to diminish the reprobation with which it is regarded by the civilized world; and nothing to justify the charge brought against its opposers, of unwarrantable interference. Having finished this part of my task, I shall now pass to those portions of Mr. Clay's speech ¹ in which he meets the arguments against slavery by attempting to show that emancipation is impossible. . . . Mr. Clay maintains that the total value of the slave property in the United States is twelve hundred millions of dollars and considers this immense amount as putting the freedom of the slave out of the question. Who can be expected to make such a sacrifice? The accuracy of this valuation of the slaves I have nothing to do with. I admit it without dispute. But the impression made on my mind by the vastness of the sum is directly the reverse of the effect on Mr. Clay. Regarding slavery as throughout a wrong, I see in the immensity of the value of the slaves the enormous amount of the robbery committed on them. I see twelve hundred millions of dollars seized, extorted by unrighteous force. I know not on the face of the earth a system of such enormous spoliation. I know nowhere injustice on such a giant scale. And yet the vast amount of this wrong is, in the view of many, a reason for its continuance!

¹ As quoted above, p. 396.

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If I strip my neighbor of a few dollars, I ought to restore them; but if I have spoiled him of his all and grown rich on the spoils, I must not be expected to make restitution! Justice, when it will cost
5 much, loses its binding power. What makes the present case more startling is that this vast amount of property consists not of the goods of injured men but of the men themselves. . . . Sad and strange that a distinguished man, in the face of a great people
10 and of the world, should talk with entire indifference of fellow-creatures, held and labelled as property to this immense amount. But this property is not to be questioned, for it has been held and sanctified by two hundred years of legislation. . . .

15 Is injustice changed into justice by the practice of the ages? Is my victim made a righteous prey because I have bowed him to the earth till he can not rise? For more than two hundred years, heretics were burned, and not by mobs, not by Lynch law,
20 but by the decrees of councils, at the instigation of theologians and with the sanction of the laws and religions of nations; and was this a reason for keeping up the fires, that they had burned two hundred years?

25 It is said that this property must not be questioned because it is established by law. "That is property which the law declares to be property," says Mr. Clay. Thus human law is made supreme, decisive in great questions of morals, and the idea of an

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eternal, immutable justice is set at naught. . . .

“That is property which the law declares to be property.” Then the laws have only to declare you, or me or Mr. Clay to be property and we become chattels and are bound to bear the yoke!

I always hear with pain the doctrine, too common among lawyers, that property is the creature of the law; as if it had no natural foundation, as if it were not a natural right, as if it did not precede all laws and were not their ground, instead of being their effect. . . . Mr. Clay insists that the slave-holder has a right to full compensation from those who call on him to surrender his slaves. I utterly deny such a right in a man who surrenders what is not his own. . . . One would think indeed, from the common language on the subject, that the negroes were to be annihilated by being set free; that the whole labor of the South was to be destroyed by a single blow. But the colored man when freed will not vanish from the soil. He will stand there with the same muscles as before, only strung anew by liberty; with the same limbs to toil and with stronger motives to toil than before. . . . For what mighty loss, then, does the slave-holder need compensation? . . . The slave-holder in relinquishing what is another's will add a new value to what is unquestionably his own; worn-out soils will be renewed and the whole country assume a brighter aspect under free labor. . . .

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The next objection to emancipation is that it will produce an amalgamation of the white and colored races. This objection is a strange one from a resident of the South. . . . Slavery tends directly to intermingle the races. It robs the colored female of protection against licentiousness. Still worse it robs her of self-respect. It dooms her class to prostitution. Nothing but freedom can give her the feelings of a woman and can shield her from brutal lust.

Slavery . . . makes her a stranger to the delicacy of her sex. As far as marriage is concerned, there seems to be a natural repugnance between the races. And there is another security against amalgamation. I refer to the mark which has been set upon the colored race by their past slavery, a mark which generations will not efface and in which the whites will have no desire to participate. . . . The spirit of caste which almost seems the strongest in human nature will certainly postpone amalgamation long enough to give the world opportunity to understand and manage the subject much better than ourselves. To continue a system of wrong from dread of such evils only shows the ingenuity of power in defending itself.

. . . We are told, finally, that it will stir up the two races to a war which nothing but the slavery or extermination of one or the other will end. We have often heard of the "fears of the brave" so that we ought not perhaps to wonder at the alarm here

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expressed. And yet we are somewhat surprised that "the chivalry of the South" should see in the colored man a formidable foe and should be willing to put forth their fears as a defense of their injustice. . . . Were they a fierce, savage, indomitable race they might be looked on with apprehension; but they are the most inoffensive people on earth; and their mildness has undoubtedly perpetuated their chains. With emancipation their present rapid increase will be checked, for the motive to breed them will cease. . . . Can we conceive of a country which has so little to dread from emancipation as this, reaching, as it does from ocean to ocean, and destined to receive increasing accessions to its numbers from the Old World? . . . But suppose we allow emancipation to be dangerous. Will it be safer hereafter than at the present moment? Will it be safer when the slaves shall have doubled, trebled or still more increased? And must it not at length come? Can any man who considers the chances of war and the direction which opinion is taking in the civilized world believe that slavery is to be perpetual? Is it wise to wink out of sight a continually increasing peril?

7. *The Works of John C. Calhoun*, edited by Richard K. Crallé, Vol. VI. [An argument against the abolition of slavery in the District of Columbia.]

Pages 253-254, 307-311.

Nor can I give my support to any candidate who

Source Problems in United States History

shall give his aid or countenance to the agitation of abolition in Congress or elsewhere: or whose prominent and influential friends and supporters shall. I doubt the sincerity of any man who declares he is no abolitionist whilst, at the same time, he aids or countenances the agitation of the question, be his pretext what it may. If we have a right to our slaves we have the right to hold them in peace and quiet. If the Constitution guarantees the one, it guarantees the other; and if it forbids the one from being attacked, it equally forbids the other. Indeed, the one stands to the other as means to an end, and is so avowed by the abolitionists. . . . It is time that an end should be put to this system of plunder and agitation. . . . While the tariff takes from us the proceeds of our labor, abolition strikes at the labor itself. The one robs us of our income while the other aims at destroying the source from which that income is derived. . . .

The probability is that general emancipation would follow the abolition of slavery in the District of Columbia. The depressing effects of such measures on the white race at the South and the hope that they would create in the black of a speedy emancipation would produce a state of feeling inconsistent with the much longer continuance of the existing relations between the two. But be that as it may, it is certain, if emancipation did not follow as a matter of course, the final act in the States would

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not be long delayed. The want of constitutional power would oppose a feeble resistance. The great body of the North is united against our peculiar institution. Many believe it to be sinful and the
5 residue, with inconsiderable exceptions, believe it to be wrong. Such being the case, it would indicate a very superficial knowledge of human nature to think, after aiming at abolition, systematically, for so many years and pursuing it with such un-
10 scrupulous disregard of law and Constitution, that the fanatics who have led the way and forced the great body of the North to follow them would, when the finishing stroke only remained to be given, voluntarily suspend it or permit any constitutional
15 scruples or considerations of justice to arrest it. To these may be added [the plan], though not yet commenced, long meditated and threatened: to prohibit what the abolitionists call the internal slave trade, meaning thereby the transfer of slaves from one
20 state to another, from whatever motive done or however effected. Their object would be to render them worthless by crowding them together where they are and thus hasten the work of emancipation. There is reason for believing that it will soon follow
25 those now in progress unless, indeed, some decisive steps should be taken in the mean time to arrest the whole. Will these measures of aggression already proposed in the House of Representatives be adopted? . . .

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How shall we meet the issue? It is for you to decide and it would be to insult you to suppose that you could hesitate. To destroy the existing relations between the free and servile races at the South would lead to consequences unparalleled in history. They can not be separated and can not live together in harmony or to their mutual advantage except in their present relation. Under any other, wretchedness and misery and desolation would overspread the South. The example of the British West Indies, as blighting as emancipation has proved to them, furnishes a very faint picture of the calamities it would bring on the South. The circumstances under which it would take place with us would be entirely different from those which took place with them and calculated to lead to far more disastrous results. There the Government was pursuing a definite policy and was not moved by fanaticism, . . . it was disposed to be just to the owners of slaves and it appropriated, accordingly, nearly \$100,000,000 as a compensation for the losses of the master. Since emancipation, it has kept up a sufficient military and naval force to keep the blacks in awe. But notwithstanding all this the British West India possessions are ruined, impoverished, miserable, wretched and destined probably to be abandoned to the black race.

Very different would be the circumstances under which emancipation would take place with us. If

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it ever should be effected, it would be through the agency of the Federal Government controlled by the dominant power of the Northern States of the Confederacy against the resistance and struggle of the Southern. It can then only be effected by the prostration of the white race; and that would necessarily engender the bitterest feelings of hostility between them and the North. But the reverse would be the case between the blacks of the South and the people of the North. Owing their emancipation to them, they would regard them as friends, guardians and patrons and centre accordingly all their sympathy in them. The people of the North would not fail to reciprocate and to favor them instead of the whites. Under the influence of such feelings and impelled by fanaticism and love of power, they would not stop at emancipation. Another step would be taken—to raise them to a political and social equality with their former owners, by giving them the right of voting and holding public offices under the Federal Government. We see the first step toward it in the bill already alluded to—to vest the free blacks and slaves with the right to vote on the question of emancipation in the District of Columbia.

But when once raised to an equality, they would become the fast political associates of the North, acting and voting with them on all questions and, by this political union between them, holding the white race at the South in complete subjection.

Source Problems in United States History

The blacks and the profligate whites that might unite with them would become the principal recipients of Federal offices and patronage and would, in consequence, be raised above the whites of the South
5 in the political and social scale. We would in a word change conditions with them—a degradation greater than has yet fallen to the lot of a free and enlightened people and one from which we could not escape, should emancipation take place (which
10 it certainly will if not prevented), but by fleeing the homes of ourselves and ancestors and by abandoning our country to our former slaves to become the permanent abode of disorder, anarchy, poverty, misery and wretchedness.

15 8. *A Memoir on Slavery*, by William Harper.

Pages 14-80.

It belongs to the being of superior faculties to judge of the relations which shall subsist between himself and inferior animals and the use he shall
20 make of them; and he may justly consider himself, who has the greater capacity for enjoyment, in the first instance. Yet he must do this conscientiously and, no doubt, moral guilt has been incurred by the infliction of pain on these animals, with no adequate
25 benefit to be expected. I do no disparagement to the dignity of human nature, even in its humblest form, when I say that on the very same foundation, with the difference only of circumstance and degree, rests the right of the civilized and cultivated man

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over the savage and ignorant. It is the order of nature and of God that the being of superior faculties and knowledge, and therefore of superior power, should control and dispose of those who are inferior. 5 It is as much in the order of nature that men should enslave each other as that other animals should prey upon each other. I admit that he does this under the highest moral responsibility and is most guilty if he wantonly inflicts misery or privation on beings 10 more capable of enjoyment or suffering than brutes without necessity or any view to the greater good which is to result. . . .

Property—the accumulation of capital, as it is commonly called—is the first element of civilization. 15 But to accumulate or to use capital to any considerable extent, the combination of labor is necessary. In early stages of society, when people are thinly scattered over an extensive territory, the labor necessary to extensive works can not be commanded. 20 Men are independent of each other. [When] land is abundant, no one can employ more capital than he can use with his own hands or those of his own family, nor have an income beyond the necessities of life. There can, therefore, be little leisure for 25 intellectual pursuits or means of acquiring the comforts or elegancies of life. It is hardly necessary, however, to say that if a man has the command of slaves, he may combine labor and use capital to any required extent and therefore accumulate

Source Problems in United States History

wealth. . . . It is only in the slave-holding States of our Confederacy that wealth can be acquired by agriculture, which is the general employment of our whole country. Among us we know that there is no
5 one, however humble in his beginnings, who with persevering industry, intelligence, orderly and virtuous habits may not attain to considerable opulence. So far as wealth has been accumulated in the States which do not possess slaves, it has been in the cities
10 by the pursuits of commerce or lately by manufactures. But the products of slave labor furnish more than two-thirds of the materials of our commerce which the industry of those States is employed in transporting and exchanging; and among the slave-
15 holding States is to be found the greater market for all the productions of their industry of whatever kind. The prosperity of those States, therefore, and the civilization of their cities have been for the most part created by the existence of slavery. . . .

20 Mutation and progress is the condition of human affairs. Though retarded for a time by extraneous or accidental circumstances, the wheel must go on. The tendency of population is to become crowded, increasing the difficulty of obtaining subsistence.
25 There will be some without any property except the capacity for labor. They must sell to those who have the means of employing them, thereby swelling the amount of capital and increasing inequality. . . . The number of laborers increases until there

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is a difficulty in obtaining employment. The remuneration of labor becomes gradually less and less; a larger and larger proportion of the product of labor goes to swell the fortunes of the capitalist; 5 inequality becomes still greater and more invidious until the process ends in just such a state of things as we see in England to-day. . . . The laboring class compose the bulk of the people . . . [whose] common lot is poverty, ignorance, wretchedness, vice, drunkenness and crime. . . . The details of this inequality and wretchedness sickens and appals, while the picture of the greatness of England, her abounding wealth, all-pervading industry, her art, learning, luxuries and benevolence imposes on the imagination. 15 Yet where so much misery exists, there must be discontent and ill-judged legislation is sure to follow. . . .

[But] this inequality, this vice, this misery, this slavery is the price of England's greatness. But 20 with us the existence of African slavery will retard the evils of civilization. . . . It is the intense competition of civilized life that gives rise to the cheapness of labor and the excessive cheapness of labor is the cause of the evils in question. Slave labor 25 can never be so cheap as what is called free labor. Political economists have established as the natural standard of wages in a fully peopled country the value of the laborer's existence. I shall not stop to inquire into the precise truth of this proposition.

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It certainly approximates the truth. Where competition is intense men will labor for a bare subsistence and less than a competent subsistence. The employer of free laborers obtains their services during
5 the time of their health and vigor without the charge of rearing them from infancy or supporting them in sickness or old age. This charge is imposed on the employer of slave labor who, therefore, pays higher wages and cuts off the principal source of misery—
10 the wants and sufferings of infancy, sickness and old age. Laborers, too, will be less skilful and perform less work—enhancing the price of that sort of labor. The poor laws of England are an attempt—but an awkward attempt—to supply the place of
15 that which we should suppose the feelings of every human heart would declare to be a natural obligation—that he who has received the benefits of the laborer's services during his health and vigor should maintain him when he becomes unable to provide
20 for his own support.

In periods of commercial revulsion and distress, the distress in countries of free labor falls principally on the laborers. In those of slave labor it falls almost exclusively on the employer. In the former,
25 when a business becomes unprofitable, the employer dismisses his laborers or lowers their wages. But with us, it is the very period at which we are least able to dismiss our laborers; and if we would not suffer a further loss, we can not reduce their wages.

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To receive the benefit of the services of which they are capable we must provide for maintaining their health and vigor. . . .

Servitude is the condition of civilization. It was
5 decreed when the command was given, "be fruitful
and multiply and replenish the earth and subdue
it" and when it was added "in the sweat of thy face
shalt thou eat bread." And what human being
shall arrogate to himself the authority to pronounce
10 that our form of it is worse in itself, or more dis-
pleasing to God, than that which exists elsewhere?
Slavery was forced upon us by the extremest exi-
gency of circumstances in a struggle for very exist-
ence. Without it, it is doubtful whether a white
15 man would be now existing on this continent—cer-
tain that, if there were, they would be in a state
of the utmost destitution, weakness and misery.
I neither deprecate nor resent the gift of slavery.
The Africans brought to us had been slaves in their
20 own country and only underwent a change of mas-
ters. That there are great evils in a society where
slavery exists and that the institution is liable to
great abuse I have already said. But the whole of
human life is a system of evils and compensations.
25 The free laborer has few real guarantees from so-
ciety, while security is one of the compensations of
the slave's humble position. There have been fewer
murders of slaves than of parents, children and ap-
prentices in society where slavery does not exist.

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The slave offers no temptation to the murderer, nor does he really suffer injury from his master. Who but a drivelling fanatic has thought of the necessity of protecting domestic animals from the cruelty
5 of their owners?

. . . It is true that the slave is driven to labor by stripes; and if the object of punishment be to produce obedience or reformation with the least permanent injury, it is the best method of punishment.
10 Men claim that this is intolerable. It is not degrading to a slave, nor is it felt to be so. Is it degrading to a child? Odium has been cast upon our legislation on account of its forbidding the elements of education to be communicated to slaves. But in
15 truth what injury has been done them by this? He who works during the day with his hands does not read in intervals of leisure for his amusement or the improvement of his mind—or the exception is so rare as scarcely to need the being provided for.
20 If there were any chance of elevating their rank, the denial of the rudiments of education might be a matter of hardship. But this they know can not be and that further attainments would be useless to them. . . .

25 It has been said that marriage does not exist among our slaves. But we know that marriages among slaves are solemnized; but the law does not make them indissoluble, nor could it do so. It may perhaps be meant that the chastity of wives

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is not protected by law from the outrages of violence. I answer, as with respect to their lives, that they are protected by manners and their position. Who ever heard of such outrages being offered? At least
5 as seldom, I will venture to say, as in other communities of different forms of polity. One reason doubtless may be that often there is no disposition to resist. Another reason also may be that there is little temptation to such violence as there is so large
10 a proportion of this class of females who set little value on chastity and afford easy gratification to the hot passions of men. Some suppose that a slaveholding country is one wide stew for the indulgence of unbridled lust, and there are particular instances
15 of brutal and shameless debauches in every country. It is even true that in this respect the morals of this class [slave women] are very loose and that the passions of men of the superior caste tempt and find gratification in the easy chastity of the females. . . .
20 [In countries where free labor prevails], the unmarried woman who becomes a mother is an outcast from society—and though sentimentalists lament the hardship of the case, it is justly and necessarily so. But with us this female slave has a different status.
25 She is not a less useful member of society than before. She has not impaired her means of support nor materially impaired her character or lowered her station in society; she has done no great injury to herself or any other human being. Her offspring is

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not a burden but an acquisition to her owner. Under these circumstances, with imperfect knowledge and unrestrained by the motives which operate to restrain, can it be a matter of surprise that she
5 should so often yield to the temptation?

. . . It is mostly the warm passions of youth which give rise to licentious intercourse. But I do not hesitate to say that the intercourse which takes place with enslaved females is less depraving in its effects
10 than when it is carried on with females of their own caste. The intercourse is generally casual and the woman is not made an associate; nor does she corrupt the manners of young men as similar women do in free society. . . . Is it no compensation for the
15 vices incident to slavery that slaves are secure against the temptation to greater crimes and the miseries which attend them? . . .

Perhaps a wise foresight should induce our State to provide that it should have within itself such
20 military knowledge and skill as may be sufficient to organize, discipline and command armies, by establishing a military academy or school of discipline. The school of the militia will not do for this. From the general opinion of our weakness, if
25 our country should at any time come into hostile collision, we shall be selected for the point of attack; making us, according to Mr. Adams's anticipation, the Flanders of the United States. . . . But the folly of these assumptions of our weakness is evident.

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The fidelity of the slaves to their masters is not to be so easily shaken as men imagine. They are already in our possession and we might at will arm and organize them in any number that we might think proper. We might use any discipline necessary to make them effective soldiers and their habits of subordination, already formed, would make the task less difficult. They are excitable by praise; and, directed by those in whom they have confidence, would rush fearlessly and unquestioning upon any sort of danger. With white officers and accompanied by a strong white cavalry, there are no troops in the world from whom there would be so little reason to apprehend insubordination or mutiny. . . .

Supposing finally that the abolitionists should effect their purpose. What would be the result? The first and most obvious effect would be to put an end to the cultivation of our great Southern staple. And this would be equally the result if we suppose the emancipated negroes to be in no way distinguished from the free laborers of other countries and that their labor would be equally effective. The cultivation of the great staple crops can not be carried on in any portion of our own country where there are not slaves. . . . Even if it were possible to procure laborers at all, what planter would venture to carry on his operations? Imagine an extensive rice or cotton plantation cultivated by free laborers who might perhaps strike for an increase of wages

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at a season when the neglect of a few days would insure the destruction of the whole crop. I need hardly say that these staples can not be produced to any extent where the proprietor of the soil cultivates it with his own hands.

And what would be the effect of putting an end to the cultivation of these staples and thus annihilating, at a blow, two-thirds or three-fourths of our foreign commerce? Can any sane mind contemplate such a result without terror? Our slavery has not only given existence to millions of slaves within our own territories, it has given the means of subsistence, and therefore of existence, to millions of freemen in our confederate States; enabling them to send forth their swarms to overspread the plains and forests of the West and appear as the harbingers of civilization. Not only on our continent but on the other it has given existence to hundreds of thousands and the means of comfortable subsistence to millions. A distinguished citizen of our State has lately stated that our great staple, cotton, has contributed more than anything else of later times to the progress of civilization. By enabling the poor to obtain cheap and becoming clothing, it has inspired a taste for comfort, the first stimulus to civilization.

Does not self-defense, then, demand of us steadily to resist the abrogation of that which is productive of so much good? It is more than self-defense. It

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is to defend millions of human beings who are far removed from us from the intensest suffering, if not from being struck out of existence. It is the defense of human civilization.

5 9. *Abraham Lincoln's Speeches*, edited by J. B. McClure. [Lincoln's Peoria speech, October 16, 1854.]

Pages 92-93.

Before proceeding let me say that I have no
10 prejudice against Southern people. They are just what we would be in their situation. If slavery did not now exist among them, they would not introduce it. If it did now exist among us, we should not instantly give it up. This I believe of the masses
15 North and South. Doubtless there are individuals, on both sides, who would not hold slaves under any circumstances and others who would gladly introduce slavery anew, if it were out of existence. We know that some Southern men do free their slaves, go
20 North, and become tip-top abolitionists; while some Northern ones go South and become most cruel slave-masters.

When Southern people tell us they are no more responsible for the origin of slavery than we are, I
25 acknowledge the fact. When it is said that the institution exists and that it is very difficult to get rid of it in any satisfactory way, I can understand and appreciate the saying. I surely will not blame them for not doing what I should not know how to do myself.

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If all earthly power were given me, I should not know what to do as to the existing institution. My first impulse would be to free all the slaves and send them to Liberia—to their native land. But a moment's reflection would convince me that whatever of high hope (as I think there is) there may be in this in the long run, its sudden execution is impossible. If they all landed there in a day, they would all perish in the next ten days, and there are not
10 surplus shipping and surplus money enough to carry them there in many times ten days. What then? Free them all and keep them among us as underlings? Is it quite certain that this betters their condition?

15 I think I would not hold one in slavery at any rate: yet the point is not clear enough for me to denounce people upon. What next? Free them, and make them politically and socially our equals? My own feelings will not admit of this; and if mine
20 would, we well know that those of the great mass of white people would not. Whether this feeling accords with justice and sound judgment, is not the sole question if indeed it is any part of it. A universal feeling, whether well or ill-founded, can not
25 be safely disregarded. We can not then make them equals. It does seem to me that systems of gradual emancipation might be adopted; but for their tardiness in this I will not undertake to judge our brethren of the South.

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When they remind us of their constitutional rights, I acknowledge them, not grudgingly but fully and fairly; and I would give them any legislation for the reclaiming of their fugitives, which should not in its stringency be more likely to carry a free man into slavery, than our ordinary criminal laws are to hang an innocent one.

10. *The Congressional Globe*, 66th Congress, 1st Session. [The Barbarism of Slavery, speech of Charles Sumner on June 4, 1860.]

Pages 2590-92.

Language is too feeble to express all the enormity of this institution, which is now vaunted as in itself a form of civilization "ennobling" at least to the master, if not to the slave. Look at it in whatever light you will and it is always the scab, the canker, the bare-bones and the shame of the country; wrong not merely in the abstract, as is often admitted by its apologists, but wrong in the concrete also and possessing no single element of right. Look at it in the light of principles and it is nothing less than a huge insurrection against the eternal law of God, involving in its pretensions the denial of all human law and also the denial of that Divine Law in which God himself is manifest, thus being practically the grossest wrong and the grossest atheism. Founded in violence, sustained only by violence, such a wrong must, by a sure law of compensation, blast the master as well as the slave; blast the lands on which

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they live; blast the community of which they are a part; blast the Government which does not forbid the outrage; and the longer it exists and the more completely it prevails the more must its blasting influences penetrate the whole social system. Barbarous in origin; barbarous in its law; barbarous in all its pretensions; barbarous in the instruments it employs; barbarous in its consequences; barbarous in spirit; barbarous wherever it shows itself, slavery must breed barbarians, while it develops everywhere, alike in the individual and in the society to which he belongs, the essential elements of barbarism. . . .

Slavery is a bloody Touch-me-not, and everywhere in sight now blooms the bloody flower. It is on the wayside as we approach the national capitol; it is on the marble steps which we mount; it flaunts on this floor. I stand now in the house of its friends. About me, while I speak, are its most sensitive guardians who have shown in the past how much they are ready to do or not to do where slavery is in question. Menaces to deter me have not been spared. But I should ill deserve this high post of duty here if I could hesitate. Idolatry has often been exposed in the presence of idolaters and hypocrisy has been chastised in the presence of Scribes and Pharisees. Such examples may give encouragement to a Senator who undertakes in this presence to expose slavery; nor can any language, directly responsive

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to the assumptions now made for this barbarism, be open to question. Slavery can only be painted in the sternest colors. . . .

The law of slavery openly pronounces the incompetency of the whole African race—whether bond or free—to testify against a white man and thus crowns its tyranny by excluding the very testimony through which the bloody cruelty of the slave-master might be exposed. In its law does slavery paint itself. . . . Against such arrogance the argument is brief. According to the law of nature, written by the same hand that placed the planets in their orbits, every human being has a complete title to himself direct from the Almighty. Naked he is born; but this birthright is inseparable from the human form. A man may be poor in this world's goods; but he owns himself. No war or robbery, ancient or recent; no capture; no middle passage; no change of clime; no purchase money; no transmission from hand to hand, no matter how many times, and no matter at what price, can defeat this indefeasible God-given franchise. . . .

Slavery tyrannically assumes a power which Heaven denied, while under its barbarous necromancy, borrowed from the Source of Evil, a man is changed into a chattel—a person is withdrawn into a thing—a soul is shrunk into merchandise. Say, sir, in your madness that you own the sun, the stars, the moon; but do not say that you own a

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man, endowed with a soul that shall live immortal, when sun and moon and stars have passed away. Under the law of slavery no marriage sacrament among slaves is respected, and no such contract can
5 exist. The ties that may be formed between slaves are all subject to the selfish interests or more selfish lust of the master whose license knows no check. Natural affections which have come together are rudely torn asunder; nor is this all. Stripped of
10 every defense, the chastity of a whole race is exposed to violence, while the result is recorded in the tell-tale faces of children, glowing with their master's blood, but doomed for their mother's skin to slavery through all descending generations.

15 . . . Slavery paints itself in its complete abrogation of the parental relation which God in his benevolence has provided for the nurture and education of the human family and which constitutes an essential part of civilization itself. And yet by the law of
20 slavery—happily beginning to be modified in some places—this relation is set at naught and in its place is substituted the arbitrary control of the master, at whose mere command little children, such as the Saviour called unto him, though clasped by a
25 mother's arms, may be swept under the hammer of the auctioneer.

Under the plain and unequivocal law of slavery, the bondman may, at the unrestrained will of his master, be shut out from all instruction while in

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many places, incredible to relate, the law itself, by cumulative provisions, positively forbids that he shall be taught to read. Of course the slave can not be allowed to read, for his soul would then expand in larger air, while he saw the glory of the North star and also the helping truth that God, who made iron, never made a slave; for he would then become familiar with the Scriptures, with the Decalogue still speaking in the thunders of Sinai; with that ancient text, "he that stealeth a man and selleth him, or if he be found in his hands, he shall surely be put to death"; with that other text, "Masters give unto your servants that which is just and equal"; and with that sublimer story, where the Saviour died a cruel death, that all men, without distinction of race, might be saved—leaving to mankind commandments which, even without his example, make slavery impossible. Thus in order to fasten your manacles upon the slave, you fasten other manacles upon his soul. Sir, is not slavery barbarous?

Finally, slavery paints itself in the appropriation of all the toil of its victims, excluding them from that property in their own earnings which the law of nature allows and civilization secures. The painful injustice of this pretension is lost in its meanness. It is robbery and petit larceny under the garb of law. And even its meanness is lost in the absurdity of its associate pretension that the African, thus despoiled of all his earnings, is saved from poverty and that

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for his own good he must work for his master and not for himself. Alas by such a fallacy is a whole race pauperized! A solemn poet, whose verse has found wide favor, pictures a creature who

5 with one hand put
A penny in the urn of poverty,
And with the other took a shilling out. . . .

I can not cease to deplore a system which, under an affectation of charity, sordidly takes from the
10 slave all the fruits of his bitter sweat and thus takes from him the mainspring to exertion. Tell me, is not slavery barbarous?

11. *The Life and Letters of Benjamin Morgan Palmer*, by Thomas Cary Johnson. [Thanks-
15 giving sermon delivered in the First Presbyterian Church, New Orleans, 1860.]

Pages 209-13.

The particular trust assigned to a people becomes the pledge of the divine protection; and their fidelity
20 to it determines the fate by which it is finally overtaken. What that trust is must be ascertained from the necessities of their position, the institutions which are the outgrowth of their principles and the conflicts through which they preserve their identity
25 and independence. If then the South is such a people what, at this juncture, is their providential trust? I answer that it is to conserve and to perpetuate the institution of domestic slavery as now

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existing. It is not necessary here to inquire whether this is precisely the best relation in which the hewer of wood and drawer of water can stand to his employer. Still less are we required to affirm that it will subsist through all time. . . .

These great questions of Providence and history must have free scope for their solution; and the race whose fortunes are distinctly implicated in the same is alone authorized, as it is alone competent, to determine them. It is just this impertinence of human legislation, settled bounds to what God alone can regulate, that the South is called, this day to resent and resist. The country is convulsed simply because the "throne of iniquity frameth mischief by a law." Without, therefore, determining the question of duty for future generations I simply say that for us, as now situated, the duty is plain of conserving and transmitting the system of slavery, with the freest scope for its natural development and extension. Let us, my brethren, look our duty in the face. With this institution assigned to our keeping, what reply shall we make to those who say that its days are numbered? My own conviction is, that we should at once lift ourselves, intelligently, to the highest moral ground and proclaim to all the world that we hold this trust from God and in its occupancy we are prepared to stand or fall as God may appoint. If the critical moment has arrived at which the great issue is joined, let us say that in the sight of all

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perils we will stand by our trust: and God be with the right!

The argument which enforces the solemnity of this providential trust is simple and condensed. It is bound upon us, then, by the principles of self-preservation, that first law which is continually asserting its supremacy over all others. Need I pause to show how this system of servitude underlies and supports our material interests; that our wealth consists in our lands and the serfs who till them; that from the nature of our products they can only be cultivated by labor which must be controlled in order to be certain; that any other than a tropical race must faint and wither beneath a tropical sun? Need I pause to show how this system is interwoven with our entire social fabric; that these slaves form parts of our households, even as our children; and that, too, through a relationship recognized and sanctioned in the Scriptures of God even as the other? . . . How then can the hand of violence be laid upon it without involving our existence? . . .

This duty is bound upon us again as the constituted guardians of the slaves themselves. Our lot is not more implicated in theirs than their lot in ours; in our mutual relations we survive or perish together. . . . It is not too much to say that if the South should, at this moment, surrender every slave, the wisdom of the entire world, united in solemn

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council, could not solve the question of their disposal. Their transportation to Africa would be but the most refined cruelty; their residence here, in the presence of the vigorous Anglo-Saxon race, would be
5 but the signal for their rapid extermination before they had time to waste away through listlessness, filth and vice. Freedom would be their doom; and equally from both they call upon us, their providential guardians, to be protected. My servant,
10 whether born in my house or bought with my money, stands me in the relation of a child. Though providentially owing me service which, providentially, I am bound to exact, he is nevertheless my brother and my friend and I am to him a guardian and
15 father. He leans upon me for protection, for counsel and for blessing; and so long as the relation continues, no power but the power of the Almighty God shall come between him and me.

The enriching commerce which has built the splendid cities and marble palaces of England, as well as
20 of America, has been largely established upon the products of our soil; and the blooms upon Southern fields gathered by black hands have fed the spindles and looms of Manchester and Birmingham
25 not less than of Lawrence and Lowell. Strike now a blow at this system of labor and the world itself totters at the stroke. Shall we permit that blow to fall? Do we not owe it to civilized man to stand in the breach and stay the uplifted arm? If the

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blind Samson lays hold of the pillars which support the arch of the world's industry, how many more will be buried beneath its ruins than the lords of the Philistines? "Who knoweth whether we are
5 not come to the kingdom for such a time as this?"

Last of all in this great struggle, we defend the cause of God and religion. The abolitionist spirit is undeniably atheistic. . . . From a thousand Jacobin clubs here, as in France, the decree has gone forth
10 which strikes at God by striking at all subordination and law. Availing itself of the morbid and misdirected sympathies of men, it has entrapped weak consciences in the meshes of its treachery; and now, at last, has seated its high priest upon the throne,
15 clad in the black garments of discord and schism, so symbolic of its ends. Under this suspicious cry of reform, it demands that every evil shall be corrected or society become a wreck—the sun must be stricken from the heavens if a spot is found on his
20 disk. The Most High, knowing his own power, which is infinite, and his own wisdom, which is unfathomable, can afford to be patient. But these self-constituted reformers must quicken the activity of Jehovah or compel his abdication. . . .

25 This spirit of atheism which knows no God who tolerates evil, no Bible which sanctions law and no conscience that can be bound by oaths and covenants, has selected us for its victims and slavery for its issue. Its banner-cry rings out already upon the

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air—"liberty, equality, fraternity," which simply interpreted mean bondage, confiscation and massacre. With its tricolor waving in the breeze, it waits to inaugurate its reign of terror. To the South
5 the high position is assigned of defending before all nations the cause of all religion and of all truth. In this trust we are resisting the power which wars against constitutions and laws and compacts, against Sabbaths and sanctuaries, against the family, the
10 State and the Church; which blasphemously invades the prerogatives of God and rebukes the Most High for the errors of his administration; which, if it can not snatch the reign of empire from his grasp will lay the universe in ruins at his feet.

15 This argument, then, which sweeps over the entire circle of our relations, touches the four cardinal points of duty to ourselves, to our slaves, to the world and to Almighty God. It establishes the nature and solemnity of our present trust to preserve
20 and transmit our existing system of domestic servitude, with the right unchallenged by man to go and root itself wherever Providence and nature may carry it. This trust we will discharge in the face of the worst possible peril.

PROBLEM VII

VII.—Fort Sumter and the Outbreak of
the Civil War

Fort Sumter and the Outbreak of the Civil War

I. THE HISTORICAL SETTING OF THE PROBLEM

THE study of the Battle of Lexington was largely an exercise in the analysis and weighing of conflicting evidence as to a single matter of fact: which side fired the first shot. The material as to the beginning of hostilities in the Civil War is of a somewhat different character. (The fundamental parallel here offered for study is that between the administrations of President Buchanan and President Lincoln, with the general aims of each, and the measures taken to accomplish the common task of preserving the Union, without war if possible.) During this period the possession of the forts in the harbor of Charleston, South Carolina, was the principal concrete issue between the cause of union and that of secession. In arguing about this matter, the opposing political philosophies of the North and the South came out in sharp contrast. But apart from theories, the leaders on both sides had to consider numerous questions of expediency and general policy, judging every proposal as to the forts in its relation to the larger issue of secession and the whole future of the country. Responsible leaders on both sides wished to accomplish their ends without bloodshed if possible; and if war proved inevitable, each section

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wished the moral advantage of having the other strike the first blow. The question of time was an added consideration. The South needed weeks and months to complete the secession movement in the states, to organize some central government, and to push military preparations. The North also, in spite of its advantage in possessing the machinery of government, was not ready for a war of any magnitude. Most of the small army was guarding the frontiers against the Indians, and many of the warships were in foreign waters.

During the five months and more covered by the source extracts, the general situation was changing with bewildering rapidity. Each extract therefore should be considered in the light of the development of the secession movement as a whole and the fortunes of the various compromise measures which aimed at a peaceful solution of the difficulty. It is important to remember that Virginia, North Carolina, Arkansas, and Tennessee did not secede until after Sumter was fired on, and that the border states of Missouri, Kentucky, and Maryland were long considered so doubtful that both sides hoped to secure their adherence. It is to make the setting of the extracts clearer that a number of chronological notes have been inserted.

It was the election of Lincoln, on a platform which opposed the further extension of slavery, which had precipitated the crisis. To President Buchanan the situation was trying in the extreme. Personally he had no sympathy with the northern radicals who in his judgment had caused all the mischief, and yet for four months he continued to be the responsible executive head of the Union. His temperament and his party affiliations made him unwilling to take drastic action against the South, yet he could not and would not admit the right of secession. For any man, the situation in which Presi-

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participant led him later to collect all possible material bearing on the Sumter episode. His book is the standard account.

3. *The War of the Rebellion: a Compilation of the Official Records of the Union and Confederate Armies*, Series I, Vol. I. (Washington, 1880.) Quoted as *Official Records*.

This great series of 129 volumes, published at intervals for a number of years, in spite of some defects in editing, is of fundamental importance for any serious study of the Civil War.

4. *Life of James Buchanan, Fifteenth President of the United States*, by George Ticknor Curtis, Vol. II. (New York, 1883.)

The author strongly sympathizes with President Buchanan, and defends practically all his actions. Many important documents are quoted.

5. *Rebellion Record*, Frank Moore, editor, Vol. I.

This series, which appeared at intervals during the war, is a rather miscellaneous collection of extracts from contemporary newspapers and the like, with a supplement of official documents.

6. *Abraham Lincoln, a History*, by John G. Nicolay and John Hay, Vols. II, III. (New York, 1890.)

This monumental work, which is practically a political history of the United States during Lincoln's lifetime, is written from a strongly union standpoint. The authors had been Lincoln's private secretaries. They are very critical of all Buchanan's acts, and seem to feel that vigorous action on his part might have prevented the spread of the secession movement.

7. *Abraham Lincoln, Complete Works*, John G. Nicolay and John Hay, editors, Vol. II. (New York, 1894.)

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III. QUESTIONS AND SUGGESTIONS FOR STUDY

1. What was the advice of army officers as to holding the Charleston forts, October–November, 1860? (Extracts 1, 4.)
2. What policy as to the secession movement was advocated by the *New York Tribune* after Lincoln's election? (2.) Do you know whether the *Tribune* was an influential paper?
3. What did Buchanan think as to the right of a state to secede? (7.)
4. To what did he attribute the secession crisis?
5. What solution did he suggest?
6. According to Buchanan, who had the power to decide the larger questions of the attitude of the United States toward secession?
7. What was meant by "coercing" a state?
8. What did Buchanan think of the constitutionality of coercion?
9. What policy as to coercion was announced in Lincoln's inaugural address?
10. What was Buchanan's conception of his right and his duty to hold the Charleston forts? (7, 20.) What authority did he have? (3, 20.)
11. What do you regard as the military advantage of holding the southern forts? the political advantage?
12. Was there a real distinction between the performance of Federal functions (holding forts, collecting customs, sending mail, etc.), and "coercing" a state?
13. Did the South seem to recognize such a distinction? (12, 13, 15.) Could it recognize it without admitting that the southern states were legally in the Union?
14. What did Buchanan promise the South Carolina congressmen? (8.)
15. What did the congressmen understand as to the interview? (17.)
16. What was the substance of the instructions sent to Ander-

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son? (9.) Do they seem unduly favorable to the South?

17. Was Anderson justified by his instructions in removing to Fort Sumter? (9, 12, 14.)
18. What effect did the removal of Anderson to Sumter have on South Carolina? On the southern leaders in Washington? on Secretary Floyd? on the president? (11, 12, 13, 15, 16.)
19. Why did Buchanan think of sending Anderson back, and then refuse to do so? (12, 16.)
20. Do you think that this move by Anderson constituted a violation of any pledge given by the president? What did the South think on this point? (11, 13.)
21. On what grounds did South Carolina demand possession of the forts? (15, 21.)
22. On what grounds did Buchanan refuse to evacuate the forts?
23. Why was it a tactical mistake for the administration to emphasize the property value of the forts? (16, 20.)
24. Summarize the advice given by General Scott as to the Charleston forts at different times. (10, 18, 24, 29.)
25. What federal officials mentioned in the selections favored the southern cause?
26. What indications of divided northern opinion appear?
27. Why did Buchanan decide to try to reinforce the forts in November? How was he dissuaded? (5, 6, 8.)
28. What policy as to the forts did Lincoln announce in his inaugural address? (22.)
29. Did this differ from Buchanan's policy? If so, how? Comment on this in detail.
30. What was the military situation in Charleston harbor at Lincoln's assumption of office? (11, 14, 16.)
31. What was Seward's attitude as to Sumter? What did the other cabinet members think on March 15th?
32. What impression was given to southern leaders by Lamon and Seward? Was either of them authorized to promise that Sumter would be evacuated?
33. Did Lincoln at one time intend to order the evacuation of Sumter? On what ground?

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34. When Seward said "Faith as to Sumter fully kept," did he mean that the fort would be given up, or that notice would be given of an attempt to provision it? (25.)
35. Why did the South feel aggrieved when word came of the attempt to provision Sumter?
36. What was Lincoln's purpose in holding Sumter? (30.)
Would holding Fort Pickens have served this purpose?
37. How did the situation at Fort Pickens influence Lincoln's decision as to Fort Sumter? (30.)
38. Why did Lincoln hesitate to reinforce Sumter?
39. Why was Anderson's reply to Beauregard's aide, April 12th, regarded as unsatisfactory? (31.)
40. On the basis of the material presented, write a concise connected account of the whole Sumter episode, giving foot-note references to your authorities.
41. Discuss the following statements, giving your reasons for agreeing or disagreeing with them:
 - (a) "When we compare what he did with what he ought to have done, we may affirm with reason that of all our Presidents, with perhaps a single exception, Buchanan made the most miserable failure." (J. F. Rhodes, *History of the United States*, III, 130.)
 - (b) "My estimate of [Buchanan's] abilities and powers as a statesman has risen with every investigation that I have made; and it is, in my judgment, not too much to say of him as President of the United States, that he is entitled to stand very high on the catalogue—not a large one—of those who have had the moral courage to encounter misrepresentation and obloquy, rather than swerve from the line of duty which their convictions marked out for them." (G. T. Curtis, *Life of James Buchanan*, I, vi.)
 - (c) "That Buchanan deserves historical censure for not having pursued the Jacksonian policy seems to me beyond question; for the path of duty was so plain that he should have walked in it, and accepted whatever consequences came from right-

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doing. Yet what the consequences might have been is a fair subject of historical inquiry. That firm and prompt action on the part of the President would have been alone sufficient to nip secession in the bud, as it did nullification in 1832, I cannot bring myself to believe, although it so appeared to some contemporary actors, and although such a view has been urged with persistence by later writers. It does, however, seem possible that such vigor might have led, in December, to a compromise of a sort to prevent the secession of any State but South Carolina. Yet those of us who hold to the idea of the irrepressible conflict can see in the success of such a project no more than the delay of a war that was inevitable. . . . The mainspring of [Buchanan's] wavering course was his feverish desire that the war should not begin under a Democratic administration, nor while he was in the Presidential chair. . . . Had he risen to that height [of Jackson] the war might have begun under his presidency, but he would have had a united North at his back; and when he retired to private life with the approval of a grateful people, he might have handed over to his successor, with the advantage of a continuity of administration, a well-defined policy." (J. F. Rhodes, *History of the United States*, III, 135-6.)

- (d) "Secretary Toombs . . . appreciated the feeling of the North, and gave his counsel in the Davis Cabinet against the immediate assault upon Sumter. . . . 'Mr. President,' he said, 'at this time, it is suicide, murder, and will lose us every friend at the North. You will wantonly strike a hornet's nest which extends from mountain to ocean, and legions, now quiet, will swarm out and sting us to death. It is unnecessary; it puts us in the wrong; it is fatal.'" (P. A. Stovall, *Life of Robert Toombs*, 226.)

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- (e) "In writing to his wife about Buchanan's message to Congress of December 4th, W. H. Seward said it 'shows conclusively that it is the duty of the President to enforce the laws—unless somebody opposes him; and that no State has a right to go out of the Union—unless it wants to.'" (*Life of Seward*, by F. W. Seward, II, 480.) Is this a fair comment?

IV. The Sources

General Winfield Scott writes President Buchanan (October 29-30, 1860) urging that all Southern Forts be immediately garrisoned, but says there are only four hundred soldiers available. He adds political advice as to allowing peaceful Secession. Both the military and the political advice the President "dismissed . . . from his mind without further consideration." (*Mr. Buchanan's Administration*, 104.)

1. *Official Records*, Series I, Vol. I, p. 69.

[November 5, 1860. Col. J. L. Gardner, commanding at Fort Moultrie, South Carolina, to Col. H. K. Craig, Chief of Ordnance, Washington.]

. . . On the point of expediency . . . I am constrained to say that the only proper precaution . . . is to fill these two companies with drilled recruits (say fifty men) at once, and send two companies from Old Point Comfort to occupy respectively Fort Sumter and Castle Pinckney.

November 6th. Abraham Lincoln elected President.

2. *The American Conflict*, by Horace Greeley, p. 359. [Editorial, November 9, 1860, in the *New York Tribune*.]

The telegraph informs us that most of the Cotton States are meditating a withdrawal from the Union,

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because of Lincoln's election. . . . We hold, with Jefferson, to the inalienable right of communities to alter or abolish forms of government that have become oppressive or injurious; and, if the Cotton
5 States shall decide that they can do better out of the Union than in it, we insist on letting them go in peace. The right to secede may be a revolutionary one, but it exists nevertheless.

10 November 10th. The South Carolina Legislature calls a Convention to meet December 17th, to consider the question of Secession.

3. *Life of James Buchanan*, by G. T. Curtis, Vol. II, pp. 321, 323, 324.

15 [From the legal opinion given November 20th by Attorney-General J. S. Black, when asked by President Buchanan as to the rights and duties of the Executive under the existing circumstances.]

Your right to take such measures as may seem
20 to be necessary for the protection of the public property is very clear. . . . The existing laws put and keep the Federal Government strictly on the defensive. You can use force only to repel an assault on the public property and aid the courts in the performance of their duty. If the means given to you collect
25 the revenue and execute the other laws be insufficient for that purpose, Congress may extend and make them more effectual to those ends. If one of the States should declare her independence . . . I see

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no course for you but to go straight onward in the path you have hitherto trodden—that is, execute the laws to the extent of the defensive means placed in your hands, and act generally upon the assumption that the present constitutional relations between the States and the Federal Government continue to exist, until a new code of things shall be established either by law or force.

4. *Official Records*, Series I, Vol. I, p. 75.

[November 23, 1860. Major Robert Anderson, now in command of the forts in Charleston harbor, to Col. S. Cooper, Adjutant-General, Washington.]

I need not say how anxious I am—indeed, determined, so far as honor will permit—to avoid collision with the citizens of South Carolina. Nothing, however, will be better calculated to prevent bloodshed than our being found in such an attitude that it would be madness and folly to attack us. There is not so much of feverish excitement as there was last week, but that there is a settled determination to leave the Union, and to obtain possession of this work, is apparent to all. Castle Pinckney, being so near the city, and having no one in it but an ordnance sergeant, they regard as already in their possession. The clouds are threatening, and the storm may break upon us at any moment. I do, then, most earnestly entreat that a re-enforcement be immediately sent to this garrison, and that two com-

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panies be sent at the same time to Fort Sumter and Castle Pinckney. . . . I feel the full responsibility of making the above suggestions, because I firmly believe that as soon as the people of South Carolina
s learn that I have demanded re-enforcements, and that they have been ordered, they will occupy Castle Pinckney and attack this fort. It is therefore of vital importance that the troops embarked (say in war steamers) shall be designated for other duty.
10 . . . I will thank the Department to give me special instructions, as my position here is rather a politico-military than a military one. . . .

5. *Genesis of the Civil War*, by S. W. Crawford, p. 28.
[Account by W. H. Trescot, then Assistant Secretary of State, of events in Washington about
15 November 25, 1860. The account was not written until February, 1861.]

Governor Floyd [then Secretary of War] called upon me evidently much excited. He said that just
20 after dinner the President had sent for him . . . that when he reached him he found General Cass and Judge Black, who retired immediately upon his entrance. The President then informed him that he had determined to reinforce the garrisons in Charles-
15 ton harbor, upon which a very animated discussion arose. The President finally consented to suspend his decision until General Scott could reach Washington. . . . Governor Floyd declared [to Trescot] that his mind was made up, that he would cut off

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his right hand before he would sign an order to send reinforcements to the Carolina forts, and that if the President insisted, he would resign. Mr. Thompson, Secretary of the Interior, agreed with him perfectly, and said he would sustain his course and follow him. [After conversation with Floyd, Trescot decided to write the Governor of South Carolina that] the President was under very strong apprehensions that the people of Charleston would seize the forts; that in consequence he felt bound to send reinforcements. That the Southern members of the Cabinet would resist this policy, to resignation, but that they thought that if he felt authorized to write a letter assuring the President that if no reinforcements were sent, there would be no attempt upon the forts before the meeting of the Convention, and that then Commissioners would be sent to negotiate all the points of difference; that their hands would be strengthened, the responsibility of provoking collision would be taken from the State, and the President would probably be relieved from the necessity of pursuing this policy.

November 26th. Trescot writes Governor Gist of South Carolina as above.

6. *Genesis of the Civil War*, by S. W. Crawford, p. 31.
[Part of Governor Gist's reply, November 29th.]
. . . Although South Carolina is determined to secede . . . yet the desire of her constituted authori-

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ties is, not to do anything that will bring on a collision before the ordinance of secession has been passed and notice has been given to the President of the fact; and not then, unless compelled to do so
5 by the refusal of the President to recognize our right to secede, by attempting to interfere with our exports or imports, or by refusal to surrender the forts and arsenals within our limits. . . . But the Legislature and myself would be powerless to pre-
10 vent a collision if a single soldier or another gun or ammunition be placed in the forts. If President Buchanan . . . sends on a reinforcement, the responsibility will rest on him of lighting the torch of discord, which will only be quenched in blood. . . . If
15 you think there is no impropriety in showing this letter to the President you are at liberty to do so. . . .

7. *Life of James Buchanan*, by G. T. Curtis, II,
p. 337 ff.

[Part of President Buchanan's Message to Con-
20 gress, December 4th.]

. . . Why is it . . . that discontent now so extensively prevails, and the Union of the States . . . is threatened with destruction? The long continued and intemperate interference of the Northern people with
25 the question of slavery in the Southern States has at length produced its natural results. The different sections of the Union are now arrayed against each other. . . . How easy it would be for the American people to settle the slavery question forever,

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and to restore peace and harmony to this distracted country! . . . All that is necessary to accomplish the object, and all for which the slave States have ever contended, is to be let alone and permitted to manage their domestic institutions in their own way. . . . It has been claimed within the last few years that any State, whenever this shall be its sovereign will and pleasure, may secede from the Union in accordance with the Constitution, and without any violation of the constitutional rights of the other members of the Confederacy. That as each became parties to the Union by the vote of its own people assembled in convention, so any one of them may retire from the Union in a similar manner by the vote of such a convention. In order to justify secession as a constitutional remedy, it must be on the principle that the Federal Government is a mere voluntary association of States, to be dissolved at pleasure by any one of the contracting parties. If this be so, the Confederacy is a rope of sand. . . . Such a principle is wholly inconsistent with the history as well as the character of the Federal Constitution. . . . It was intended to be perpetual, and not to be annulled at the pleasure of any one of the contracting parties. . . . Secession is neither more nor less than revolution. It may or it may not be a justifiable revolution; but still it is revolution. What, in the meantime, is the responsibility and true position of the Executive? He is bound by

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solemn oath . . . "to take care that the laws be faithfully executed." . . . But what if the performance of this duty, in whole or in part, has been rendered impracticable by events over which he could have
5 exercised no control? [Federal officers in South Carolina have resigned. Existing laws are inadequate to enable the President] without further legislation, to overcome a united opposition in a single State, not to speak of other States who may place
10 themselves in a similar attitude. Congress alone has the power to decide whether the present laws can or cannot be amended so as to carry out more effectively the objects of the Constitution. . . . The revenue still continues to be collected, as heretofore,
15 at the custom-house in Charleston, and should the collector unfortunately resign, a successor may be appointed to perform this duty. Then, in regard to the property of the United States in South Carolina. This has been purchased, for a fair equivalent, "by
20 the consent of the legislature of the State," "for the erection of forts, magazines, arsenals," etc., and over these the authority to "exercise exclusive legislation," has been expressly granted by the Constitution to Congress. It is not believed that any
25 attempt will be made to expel the United States from this property by force; but if in this I should prove to be mistaken, the officer in command of the forts has received orders to act strictly on the defensive. In such a contingency the responsibility

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for consequences would rightfully rest upon the heads of the assailants.

Apart from the execution of the laws, so far as this may be practicable, the Executive has no authority to decide what shall be the relations between the Federal Government and South Carolina. . . . It is, therefore, my duty to submit to Congress the whole question in all its bearings. . . . The question fairly stated is: Has the Constitution delegated to Congress the power to coerce a State into submission which is attempting to withdraw, or has actually withdrawn, from the Confederacy? If answered in the affirmative, it must be on the principle that the power has been conferred upon Congress to declare and make war against a State. After much serious reflection, I have arrived at the conclusion that no such power has been delegated to Congress or to any other department of the Federal Government. . . .

20 December 6th. The House of Representatives appoints a Committee of Thirty-three to seek a basis for a compromise.

8. *Mr. Buchanan's Administration*, p. 167.

[President Buchanan's account of his interview with the South Carolina Congressmen, December 8th.]

The President having determined not to disturb the *status quo* at Charleston, as long as our troops should continue to be hospitably treated by the in-

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habitants, and remain in unmolested possession of the forts, was gratified to learn, a short time thereafter, that South Carolina was equally intent on preserving the peace. On the 8th December, 1860, 5 four of the Representatives in Congress from that State sought an interview, and held a conversation with him concerning the best means of avoiding a hostile collision between the parties. In order to guard against any misapprehension on either side, 10 he suggested that they had best reduce their verbal communication to writing, and bring it to him in that form. Accordingly, on the 10th December, they delivered him a note, dated on the previous day, and signed by five members, in which they say: 15 'In compliance with our statement to you yesterday, we now express to you our strong convictions that neither the constituted authorities, nor any body of the people of the State of South Carolina, will either attack or molest the United States forts in the 20 harbor of Charleston, previously to the action of the Convention; and we hope and believe not until an offer has been made, through an accredited representative, to negotiate for an amicable arrangement of all matters between the State and the Federal 25 Government, provided that no reënforcements be sent into these forts, and their relative military status shall remain as at present.' Both in this and in their previous conversation, they declared that in making this statement, they were acting solely

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on their own responsibility, and expressly disclaimed any authority to bind their State. They, nevertheless, expressed the confident belief that they would be sustained both by the State authorities and by the Convention, after it should assemble. Although the President considered this declaration as nothing more than the act of five highly respectable members of the House, yet he welcomed it as a happy omen, that by means of their influence collision might be prevented, and time afforded to all parties for reflection and for a peaceable adjustment. From abundant caution, however, he objected to the word 'provided' in their statement, lest, if he should accept it without remark, this might possibly be construed into an agreement on his part not to reënforce the forts. Such an agreement, he informed them, he would never make. It would be impossible for him, from the nature of his official responsibility, thus to tie his own hands and restrain his own freedom of action. Still, they might have observed from his message, that he had no present design, under existing circumstances, to change the condition of the forts at Charleston. He must, notwithstanding, be left entirely free to exercise his own discretion; according to exigencies as they might arise. They replied that nothing was farther from their intention than such a construction of this word; they did not so understand it, and he should not so consider it.

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December 8th. Howell Cobb, Secretary of the Treasury, resigns because of his sense of duty to the State of Georgia.

9. *Official Records*, Series I, Vol. I, p. 89.

5 [Memorandum of verbal instructions from Secretary of War Floyd to Major Anderson, communicated December 11th by Assistant Adj.-Gen. D. C. Buell.]

You are aware of the great anxiety of the Secretary of War that a collision of the troops with the people
10 of this State shall be avoided, and of his studied determination to pursue a course with reference to the military force and forts in this harbor which shall guard against such a collision. He has therefore carefully abstained from increasing the force
15 at this point, or taking any measures which might add to the present excited state of the public mind, or which would throw any doubt on the confidence he feels that South Carolina will not attempt, by violence, to obtain possession of the public works
20 or interfere with their occupancy. But as the counsel and acts of rash and impulsive persons may possibly disappoint those expectations of the Government, he deems it proper that you should be prepared with instructions to meet so unhappy a
25 contingency. He has therefore directed me verbally to give you such instructions.

You are carefully to avoid every act which would needlessly tend to provoke aggression; and for that reason you are not, without evident and imminent

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necessity, to take up any position which could be construed into the assumption of a hostile attitude. But you are to hold possession of the forts in this harbor, and if attacked you are to defend yourself to the last extremity. The smallness of your force will not permit you, perhaps, to occupy more than one of the three forts, but an attack on or attempt to take possession of any one of them will be regarded as an act of hostility, and you may then put your command into either of them which you may deem most proper to increase its power of resistance. You are also authorized to take similar steps whenever you have tangible evidence of a design to proceed to a hostile act.

December 15th. Lewis Cass, Secretary of State, resigns because more vigorous action is not taken to meet the situation in Charleston.

10. *History of the United States, 1850-1877*, by J. F. Rhodes, III, p. 188, n. 2.

[Letter of General Winfield Scott to President Buchanan, December 15th, urging reinforcement of the Charleston forts, and describing how President Jackson met Nullification in 1832-3.]

... Long *prior* to the *Force Bill* (March 2, 1833), *prior* to the issue of his proclamation, and, in part, *prior* to the passage of the ordinance of nullification, President Jackson—under the Act of March 3, 1807, “authorizing the employment of the land and naval forces”—caused reinforcements to be sent to

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Fort Moultrie, and a sloop of war (the *Natchez*), . . . in order to prevent the seizure of that fort by the nullifiers, and, 2, to insure the execution of the revenue laws. General Scott himself arrived at Charleston
5 the day after the passage of the ordinance of nullification, and many of the additional companies were then en route for the same destination.

President Jackson familiarly said at the time:
"That, by the assembling of those forces, for lawful
10 purposes, he was not making war upon South Carolina; but that if South Carolina attacked them, it would be South Carolina that made war upon the United States."

15 December 20th. The South Carolina Convention passes the Ordinance of Secession.

December 21st. Secretary of War Floyd tells Major Anderson that resistance to the "last extremity" does not require useless sacrifice of life against overwhelming odds.

20 December 26th. Major Anderson, in view of the military preparations of South Carolina, abandons Fort Moultrie as too exposed, and transfers his men to Fort Sumter, on an island in the harbor.

December 27th. Major Anderson refuses the demand of Governor Pickens that he should return to Fort Moultrie.
25 South Carolina takes possession of all Forts except Sumter, raises the State flag over the custom-house and post-office, and (December 30th) seizes the arsenal.

December 27th. President Buchanan is to receive three Commissioners appointed December 22d by South Carolina,
30 empowered to treat with the Government of the United States for the delivery of the forts, etc., and the assumption of South Carolina's share of the national debt.

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11. *Genesis of the Civil War*, by S. W. Crawford,
p. 142.

[W. H. Trescot's account of the effect produced in Washington, December 27th, by the news of Major Anderson's removal. Trescot was Assistant Secretary of State until December 17th, but a Southern sympathizer. The account was written in February, 1861.]

... The next morning early, I was at the residence of the Commissioners, and while talking over the condition of affairs, Colonel Wigfall, one of the Senators from Texas, came in to inform us that the telegraph had just brought the news that Major Anderson had abandoned Fort Moultrie, spiked his guns, burned his gun-carriages, cut down the flag-staff and removed his command to Fort Sumter. We all expressed our disbelief of the intelligence, and after a good deal of discussion as to its probability I said, "Well, at any rate, Colonel, true or not, I will pledge my life, if it has been done, it has been without orders from Washington." Just as I made the remark Governor Floyd was announced. After the usual courtesies of meeting I said, "Governor, Colonel Wigfall has just brought us this news—repeating it—and as you were coming up-stairs I said I would pledge my life it was without orders." "You can do more," he said smiling, "You can pledge your life, Mr. Trescot, that it is not so. It is impossible. It would be not only without orders, but

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in the face of orders. To be very frank, Anderson was instructed in case he had to abandon his position to dismantle *Fort Sumter*, not Fort Moultrie." I asked him, if his carriage was at the door, to let me
5 take it and go home, as there might be telegrams there. I went, and in a few minutes returned with two telegrams for Colonel Barnwell, which he read and handed to Governor Floyd, saying, "I am afraid, Governor, it is too true." Floyd read them, asked
10 the Commissioners if the authority was sufficient, and made no comment, but rose, saying, "I must go to the Department at once."

As soon as he had left I drove to the Capitol, communicated the intelligence to Senator Davis, of
15 Mississippi, and Senator Hunter, of Virginia, and asked them to accompany me to the President. We drove to the White House, sent in our names, and were asked into the President's room, where he joined us in a few moments. When we came in he
20 was evidently nervous, and immediately commenced the conversation by making some remark to Mr. Hunter concerning the removal of the consul at Liverpool, to which Mr. Hunter made a general reply. Colonel Davis then said, "Mr. President, we
25 have called upon an infinitely graver matter than any consulate." "What is it?" said the President. "Have you received any intelligence from Charleston in the last few hours?" asked Colonel Davis. "None," said the President. "Then," said Colonel

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Davis, "I have a great calamity to announce to you." He then stated the facts and added, "And now, Mr. President, you are surrounded with blood and dishonor on all sides." The President was
5 standing by the mantel-piece, crushing up a cigar in the palm of one hand—a habit I have seen him practice often. He sat down as Colonel Davis finished, and exclaimed, "My God, are calamities (or misfortunes, I forget which) never to come singly! I
10 call God to witness, you gentlemen, better than anybody, *know* that this is not only without but against my orders. It is against my policy." He then expressed his doubt of the truth of the telegram, thought it strange that nothing had been heard at
15 the War Department, said he had not seen Governor Floyd, and finally sent a messenger for him. When Governor Floyd came, he said no news had come to the Department, that the heads of the Bureaus there thought it unlikely, but that he had tele-
20 graphed Major Anderson to this effect himself. "There is a report here that you have abandoned Fort Moultrie, spiked your guns, burned your carriages and gone to Fort Sumter. It is not believed, as you had no orders to justify it. Say at once what
25 could have given rise to such a story."

The President was urged to take immediate action; he was told the probability was that the remaining forts and the arsenal would be seized and garrisoned by South Carolina, and that Fort Sumter

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would be attacked; that if he would only say that he would replace matters as he had pledged himself that they should remain, there was yet time to remedy the mischief. The discussion was long and earnest. At first he seemed disposed to declare that he would restore the status, then hesitated, said he must call his Cabinet together; he could not condemn Major Anderson unheard. He was told that nobody asked that; only say that *if* the move had been made without a previous attack on Anderson he would restore the status. Assure us of that determination, and then take what time was necessary for consultation and information. That resolution telegraphed would restore confidence and enable the Commissioners to continue their negotiation. This he declined doing, and after adjourning his appointment to receive the Commissioners until the next day we left. On our way out we met General Lane, Senators Bigler, Mallory, Yulie, and some others on their way to make the same remonstrance, for the news was over the city. Later in the day I saw him again, to show him some telegrams fuller in details. Senator Slidell was with him, but all that he did was to authorize me to telegraph that Anderson's movement was not only without but against his orders.

12. *Mr. Buchanan's Administration*, p. 180.

[President Buchanan's version of the interview with the South Carolina Commissioners, December 28th.]

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[The South Carolina Commissioners sent information to the President of Anderson's move to Sumter.] He received it with astonishment and regret. With astonishment, because he had believed Major Anderson to be in security at Fort Moultrie; and this more especially whilst the commissioners appointed but three days before were on their way to Washington. With regret, because this movement would probably impel the other cotton and border States into active sympathy with South Carolina, and thereby defeat the measures of compromise still before the Committee of Thirteen of the Senate, from which he had hoped to confine secession to that State alone. The President never doubted for a moment that Major Anderson believed before the movement that he had "the tangible evidence" of an impending attack required by his instructions. Still it was difficult to imagine that South Carolina would be guilty of the base perfidy of attacking any of those forts during the pendency of her mission to Washington, for the avowed purpose of preserving the peace and preventing collision. Such treacherous conduct would have been considered infamous among all her sister States. She had always strenuously denied that such was her intention.

In this state of suspense the President determined to await official information from Major Anderson himself. After its receipt, should he be convinced

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upon full examination that the Major, on a false alarm, had violated his instructions, he might then think seriously of restoring for the present the former *status quo* of the forts. This, however, was soon known to be impossible, in consequence of the violent conduct of South Carolina in seizing all the other forts and public property in the harbor and city of Charleston.

It was under these circumstances that the President, on Friday, the 28th of December, held his first and only interview with the commissioners from South Carolina. He determined to listen with patience to what they had to communicate, taking as little part himself in the conversation as civility would permit. On their introduction he stated that he could recognize them only as private gentlemen and not as commissioners from a Sovereign State; that it was to Congress, and to Congress alone, they must appeal. He, nevertheless, expressed his willingness to communicate to that body, as the only competent tribunal, any propositions they might have to offer. They then proceeded, evidently under much excitement, to state their grievances arising out of the removal of Major Anderson to Fort Sumter, and declared that for these they must obtain redress preliminary to entering upon the negotiation with which they had been intrusted; that it was impossible for them to make any proposition until this removal should be satisfactorily ex-

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plained; and they even insisted upon the immediate withdrawal of the Major and his troops, not only from Fort Sumter, but from the harbor of Charleston, as a *sine qua non* to any negotiation. . . .

5 13. *Genesis of the Civil War*, by S. W. Crawford, p. 148.

[Account of the same interview written in 1871 by James Orr, one of the South Carolina Commissioners then present.]

10 The Honorable R. W. Barnwell acted as the chairman of the Commission. He brought to the attention of the President the arrangement which had been made early in December, between him and the South Carolina delegation; that it had been observed in good faith by the people of South Carolina, who could at any time, after the arrangement was made, up to the night when Major Anderson removed to Sumter, have occupied Fort Sumter and captured Moultrie with all its command; that the
15 removal of Anderson violated that agreement on the part of the Government of the United States, and that the faith of the President and the Government had been thereby forfeited. The President made various excuses why he should be allowed
20 time to decide the question whether Anderson should be ordered back to Moultrie and the former status restored. Mr. Barnwell pressed him with great zeal and earnestness to issue the order at once. Mr. Buchanan still hesitating, Mr. Barnwell said to him,

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at least three times during the interview: "But, Mr. President, your personal honor is involved in this matter; the faith you pledged has been violated; and your personal honor requires you to issue the
5 order." . . . Mr. Buchanan, with great earnestness, said: "Mr. Barnwell, you are pressing me too importunately; you don't give me time to consider; you don't give me time to say my prayers. I always say my prayers when required to act upon
10 any great state affair."

14. *Official Records*, Series I, Vol. I, p. 3.

[Reply of Major Anderson, December 27th, to a telegram from Secretary of War Floyd, asking if the news of his removal was correct.]

15 The telegram is correct. I abandoned Fort Moultrie because I was certain that if attacked my men must have been sacrificed, and the command of the harbor lost. I spiked the guns and destroyed the carriages to keep the guns from being used
20 against us. If attacked, the garrison would never have surrendered without a fight.

15. *Official Records*, Series I, Vol. I, p. 109.

[Letter sent December 28th by the South Carolina Commissioners to President Buchanan.]

25 . . . We have the honor to transmit to you a copy of the full powers from the Convention of the People of South Carolina, under which we are "authorized and empowered to treat with the Government of the United States for the delivery of the forts, maga-

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zines, light-houses, and other real estate, with their appurtenances, within the limits of South Carolina; and also for an apportionment of the public debt and a division of all other property held by the Government of the United States as agent of the Confederated States, of which South Carolina was recently a member; and, generally, to negotiate as to all other measures and arrangements proper to be made and adopted in the existing relations of the parties, and for the continuance of peace and amity between this Commonwealth and the Government at Washington." [They conclude by saying that in view of Major Anderson's move, they cannot proceed with their negotiations, and urge the immediate withdrawal of all troops from Charleston.]

16. *Official Records*, Series I, Vol. I, p. 115.

[The President's reply to the above, December 31st. The first draft of this letter was materially strengthened on the advice of J. S. Black, Secretary of State.]

[The President begins by saying that only Congress can deal with the whole question of secession. He denies that he made any pledge not to change the situation in Charleston, quoting the memorandum of December 9th, and his reservation. He continues]:

This is the whole foundation for the alleged pledge. But I acted in the same manner as I would have done had I entered into a positive and formal agreement with parties capable of contracting, al-

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though such an agreement would have been on my part, from the nature of my official duties, impossible. The world knows that I have never sent any re-enforcements to the forts in Charleston Harbor, and I have certainly never authorized any change to be made "in their relative military status." [Quotes order of December 11th, to Anderson.] . . . Under these circumstances it is clear that Major Anderson acted upon his own responsibility, and without authority, unless, indeed, he had "tangible evidence of a design to proceed to a hostile act," on the part of the authorities of South Carolina, which has not yet been alleged. Still, he is a brave and honorable officer, and justice requires that he should not be condemned without a fair hearing.

Be this as it may, when I learned that Major Anderson had left Fort Moultrie and proceeded to Fort Sumter, my first promptings were to command him to return to his former position, and there await the contingencies presented in his instructions. This could only have been done with any degree of safety to the command by the concurrence of the South Carolina authorities. But before any steps could possibly have been taken in this direction, we received information, dated on the 28th instant, that the "palmetto flag floated out to the breeze at Castle Pinckney, and a large military force went over last night (the 27th) to Fort Moultrie." Thus the authorities of South Carolina, without waiting or ask-

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ing for any explanation, and doubtless believing, as you have expressed it, that the officer had acted not only without but against my orders, on the very next day after the night when the movement was made, seized by a military force two of the three Federal forts in the harbor of Charleston, and have covered them under their own flag instead of that of the United States. . . . It is under all these circumstances that I am urged immediately to withdraw the troops from the harbor of Charleston, and am informed that without this, negotiation is impossible. This I cannot do; this I will not do. Such an idea was never thought of by me in any possible contingency. No allusion had ever been made to it in any communication between myself and any human being. But the inference is that I am bound to withdraw the troops from the only fort remaining in the possession of the United States in the harbor of Charleston, because the officer there in command of all the forts thought proper, without instructions, to change his position from one of them to another. I cannot admit the justice of any such inference. And at this point of writing I have received information by telegraph from Captain Humphreys, in command of the arsenal at Charleston, that it "has to-day (Sunday, the 30th) been taken by force of arms." Comment is needless. It is estimated that the property of the United States in this arsenal was worth half a million dollars.

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After this information I have only to add that, whilst it is my duty to defend Fort Sumter as a portion of the public property of the United States against hostile attacks, from whatever quarter they
5 may come, by such means as I may possess for this purpose, I do not perceive how such a defense can be construed into a menace against the city of Charleston.

10 December 29th. Floyd resigns as Secretary of War, alleging that Anderson's move was a violation of a solemn pledge to South Carolina.

17. *Official Records*, Series I, Vol. I, p. 126.
[W. P. Miles and L. M. Keitt, two of the South Carolina Congressmen present at the interview
15 December 8th (extract 8 above), gave their version of the interview, and their interpretation of the President's subsequent actions in a statement to the South Carolina Convention.]

. . . When we rose to go the President said in
20 substance, "After all, this is a matter of honor among gentlemen. I do not know that any paper or writing is necessary. We understand each other." . . . The President, in his letter to our commissioners, tries to give the impression that our
25 "understanding" or "agreement" was not a "pledge." We confess we are not sufficiently versed in the wiles of diplomacy to feel the force of this "distinction without a difference." . . . Suffice it to say that considering the President as bound in

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honor, if not by treaty stipulations, not to make any change in the forts or to send re-enforcements to them unless they were attacked, we of the delegation who were elected to the Convention felt equally bound in honor to do everything on our part to prevent any premature collision. . . .

18. *Mr. Buchanan's Administration*, p. 189.

[The President's account of the attempt to reinforce Sumter, December 30th.]

The President immediately decided to send re-enforcements; but he preferred to send them by the *Brooklyn*, which had remained in readiness for this service. . . . In contradiction to this prompt action, it is difficult to imagine how the General [Scott] could have asserted, in his report to President Lincoln, that "the South Carolina commissioners had already been many days in Washington, and no movement of defence [on the part of the United States] had been permitted." . . . At the interview with President Buchanan on the evening of the 31st December, the General seemed cordially to approve the matured plan of sending re-enforcements by the *Brooklyn*. Why, then, the change in his opinion? At this interview the President informed him he had sent a letter but a few hours before to the South Carolina commissioners, in answer to a communication from them, and this letter would doubtless speedily terminate their mission;—that although he had refused to recognize them in an official char-

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acter, yet it might be considered improper to transmit the orders then in his possession to the *Brooklyn* until they had an opportunity of making a reply, and that the delay for this purpose could not, 5 in his opinion, exceed forty-eight hours. In this suggestion the General promptly concurred, observing that it was gentlemanly and proper. He, therefore, retained the orders to await the reply. On the morning of the 2d January the President received and returned the insolent communication of the South Carolina commissioners without an answer, and thus every obstacle was removed from the immediate transmission of the orders. In the mean time, however, the General had unluckily 15 become convinced, after advising with an individual believed to possess much knowledge and practical experience in naval affairs, that the better plan to secure both secrecy and success would be to send to Fort Sumter a fast side-wheel mercantile steamer 20 from New York with the two hundred and fifty recruits. . . . On the evening of the same day, however, on which this ill-fated steamer went to sea, General Scott despatched a telegram . . . to countermand her departure;¹ but this did not [arrive] until 25 after she had left the harbor.

December 30th. South Carolina cuts off all supplies going to Fort Sumter.

¹ This was because word had just come that Anderson felt secure; and also that a battery had been erected which would keep out an 30 unarmed vessel.

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January 1, 1861. The South Carolina Commissioners send a long reply to the President's letter of December 31st, charging that he had violated his pledge, and blaming him for the impending civil war. The President declines to receive the letter.

January 9th. The steamer *Star of the West* is fired on by South Carolina batteries and prevented from reaching Sumter. Major Anderson protests to Governor Pickens, demanding a disavowal, calling it an act of war, and threatening to prevent vessels from passing Sumter. The Governor replies, defending the right to secede, asserting that Major Anderson's move violated the President's pledge, and constituted an act of hostility against the State which justified firing on the *Star of the West*. Major Anderson answers that he has referred the matter to Washington, and will defer action.

January 11th. Major Anderson refuses the Governor's demand that he turn over the fort to the State, but agrees to send an officer to Washington in company with a representative of the State.

January 13th. Lieutenant Hall and Attorney-General Hayne of South Carolina reach Washington.

19. *Mr. Buchanan's Administration*, pp. 194-196.

[President Buchanan's account of the negotiations with Hayne and the Southern Senators, January 13-31.]

Thus, greatly to the surprise of the President, had a truce or suspension of arms been concluded between Major Anderson and Governor Pickens, to continue, from its very nature, until he should again decide against the surrender of Fort Sumter. . . . It is possible that, under the laws of war, the President might have annulled this truce after due notice to Governor Pickens. This, however, would have cast

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a serious reflection on Major Anderson for having concluded it, who, beyond question, had acted from the purest and most patriotic motives. Neither General Scott nor any other person, so far as is known, ever proposed to violate it. . . .

Major Anderson may probably have committed an error in not promptly rejecting the demand, as he understood it, of Governor Pickens for the surrender of Fort Sumter, instead of referring it to Washington. If the fort were to be attacked, which was then extremely doubtful, this was the propitious moment for a successful resistance. The Governor, though never so willing, was not in a condition to make the assault. He required time for preparation. On the other hand, Major Anderson was then confident in his power to repel it. . . . Still, had Governor Pickens attacked the fort, this would have been the commencement of civil war between the United States and South Carolina. This every patriot desired to avoid as long as a reasonable hope should remain of preserving peace. And then such a hope did extensively prevail, founded upon the expectation that the Crittenden Compromise, or some equally healing measure, might be eventually adopted by Congress. How far this consideration may account for Major Anderson's forbearance when the *Star of the West* was fired upon, and for his proposal two days thereafter to refer the question of the surrender of the fort to Washington, we can

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only conjecture. If this were the cause, his motive deserves high commendation. . . .

The Senators from the cotton States yet in Congress appeared, strangely enough, to suppose that through their influence the President might agree not to send reënforcements to Fort Sumter, provided Governor Pickens would stipulate not to attack it. By such an agreement they proposed to preserve the peace. But first of all it was necessary for them to prevail upon Colonel Hayne not to transmit the letter to the President on the day appointed, because they well knew that the demand which it contained would meet his prompt and decided refusal. This would render the conclusion of such an agreement impossible. . . .

January 13-31. Informal negotiations prevent the formal delivery of Governor Pickens' letter to the President.

January 9th-February 1st. Mississippi, Florida, Alabama, Georgia, Louisiana and Texas secede.

January 14th. The House Committee of Thirty-three reports a compromise.

January 16th. The Crittenden Compromise in the Senate is seen to be hopeless.

January 23d. Virginia calls for a Peace Convention.

January 28th. South Carolina declines to attend it.

January 31st. Hayne delivers Pickens' letter demanding the evacuation of Sumter.

February 4th. The Peace Conference meets in Washington with Delegates from twenty-one States. The same day

Delegates from six Cotton States meet at Montgomery, Alabama, to form a Southern Confederacy.

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20. *Mr. Buchanan's Administration*, p. 200.

[Joseph Holt, Secretary of War, replies to Hayne's letter, February 6th.]

SIR: The President of the United States has received your letter of the 31st ultimo, and has charged me with the duty of replying thereto.

In the communication addressed to the President by Governor Pickens, under date of the 12th January, and which accompanies yours now before me, his Excellency says: "I have determined to send to you the Hon. I. W. Hayne, the Attorney-General of the State of South Carolina, and have instructed him to demand the surrender of Fort Sumter, in the harbor of Charleston, to the constituted authorities of the State of South Carolina. The demand I have made of Major Anderson, and which I now make of you, is suggested because of my earnest desire to avoid the bloodshed which a persistence in your attempt to retain the possession of that fort will cause, and which will be unavailing to secure to you that possession, but induce a calamity most deeply to be deplored." The character of the demand thus authorized to be made appears (under the influence, I presume, of the correspondence with the Senators to which you refer) to have been modified by subsequent instructions of his Excellency, dated the 26th, and received by yourself on the 30th January, in which he says: "If it be so that Fort Sumter is held as property, then, as property,

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the rights, whatever they may be, of the United States, can be ascertained, and for the satisfaction of these rights you are authorized to give the pledge of the State of South Carolina." The full
5 scope and precise purport of your instructions, as thus modified, you have expressed in the following words: "I do not come as a military man to demand the surrender of a fortress, but as the legal officer of the State—its attorney-general—to claim for the
10 State the exercise of its undoubted right of eminent domain, and to pledge the State to make good all injury to the rights of property which arise from the exercise of the claim." And lest this explicit language should not sufficiently define your position,
15 you add: "The proposition now is that her (South Carolina's) law officer should, under authority of the Governor and his council, distinctly pledge the faith of South Carolina to make such compensation, in regard to Fort Sumter and its appurtenances and
20 contents, to the full extent of the money value of the property of the United States, delivered over to the authorities of South Carolina by your command." You then adopt his Excellency's train of thought upon the subject, so far as to suggest that the possession of Fort Sumter by the United States, "if
25 continued long enough, must lead to collision," and that "an attack upon it would scarcely improve it as property, whatever the result; and if captured, it would no longer be the subject of account."

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The proposal, then, now presented to the President, is simply an offer on the part of South Carolina to buy Fort Sumter and contents as property of the United States, sustained by a declaration, in effect, 5 that if she is not permitted to make the purchase she will seize the fort by force of arms. As the initiation of a negotiation for the transfer of property between friendly governments, this proposal impresses the President as having assumed a most unusual 10 form. He has, however, investigated the claim on which it professes to be based, apart from the declaration that accompanies it. And it may be here remarked, that much stress has been laid upon the employment of the words "property" and "public 15 property" by the President in his several messages. These are the most comprehensive terms which can be used in such a connection, and surely, when referring to a fort or any other public establishment, they embrace the entire and undivided interest of 20 the Government therein.

The title of the United States to Fort Sumter is complete and incontestable. Were its interest in this property purely proprietary, in the ordinary acceptance of the term, it might probably be subjected 25 to the exercise of the right of eminent domain; but it has also political relations to it of a much higher and more imposing character than those of mere proprietorship. It has absolute jurisdiction over the fort and the soil on which it stands. This juris-

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diction consists in the authority to "exercise exclusive legislation" over the property referred to, and is therefore, clearly incompatible with the claim of eminent domain now insisted upon by South Carolina. This authority was not derived from any questionable revolutionary source, but from the peaceful cession of South Carolina herself, acting through her legislature, under a provision of the Constitution of the United States. South Carolina can no more assert the right of eminent domain over Fort Sumter than Maryland can assert it over the District of Columbia. The political and proprietary rights of the United States in either case rest upon precisely the same ground.

The President, however, is relieved from the necessity of further pursuing this inquiry by the fact that, whatever may be the claim of South Carolina to this fort, he has no constitutional power to cede or surrender it. The property of the United States has been acquired by force of public law, and can only be disposed of under the same solemn sanctions. The President, as the head of the executive branch of the government only, can no more sell and transfer Fort Sumter to South Carolina than he can sell and convey the Capitol of the United States to Maryland or to any other State or individual seeking to possess it. His Excellency the Governor is too familiar with the Constitution of the United States, and with the limitations upon the powers of

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the Chief Magistrate of the government it has established, not to appreciate at once the soundness of this legal proposition. . . .

21. *Genesis of the Civil War*, by S. W. Crawford,
5 pp. 231-233.

[Hayne's reply to Holt's letter, sent direct to the President, who read it and declined to receive it, February 7th.]

You . . . attempt to ridicule the proposal as simply an offer on the part of South Carolina to buy
10 Fort Sumter and contents as property of the United States, sustained by a declaration, in effect, that if she is not permitted to make the purchase, she will seize the fort by force of arms. It is difficult to
15 consider this as other than intentional misconstruction. You were told that South Carolina, as a separate, independent sovereignty, would not tolerate the occupation, by foreign troops, of a military post within her limits, but that inasmuch as you, in
20 repeated messages and in your correspondence, had 'laid much stress' upon the character of your duties, arising from considering forts as property, South Carolina, so far as this matter of property suggested by yourself was concerned, would make compensation for all injury done the property, in the exercise of her sovereign right of eminent domain. And
25 this your Secretary calls a proposal to purchase. The idea of purchase is entirely inconsistent with the assertion of the paramount right in the purchaser.

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I had supposed that an 'interest in property' as *such*, could be no other than 'purely proprietary,' and if I confined myself to this narrow view of your relations to Fort Sumter, you at least should not
5 consider it the subject of criticism. Until your letter of yesterday, you chose so to consider your relations, in everything which you have written, or which has been written under your direction.

It was precisely because you had yourself chosen
10 to place your action upon the ground of 'purely proprietary' right, that the proposal of compensation was made, and you now admit that in this view 'it (Fort Sumter) would probably be subjected to the exercise of the right of eminent domain.'

15 In your letter of yesterday (through your Secretary) you shift your position. You claim that your Government bears to Fort Sumter 'political relations of a much higher and more imposing character.'

It was no part of my mission to discuss the 'political
20 relations' of the United States Government to anything within the territorial limits of South Carolina. South Carolina claims to have severed all political connection with your Government, and to have destroyed all political relations of your Government
25 with everything within her borders. . . . It is vain to ignore the fact that South Carolina is, to yours, a foreign Government, and how with this patent fact before you, you can consider the continued occupation of a fort in her harbor a pacific measure and

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parcel of a peaceful policy, passes certainly my comprehension. . . .

February 12th. The Confederate Congress takes over from the States all questions as to Federal forts, etc.

5 February 15th. President Davis is directed by Congress to secure possession of the Charleston forts by negotiation or force. Commissioners are appointed to negotiate a treaty with the United States settling all points in controversy.

10 February 23d. Secretary Holt directs Major Anderson to continue to act in accordance with his original instructions. March 1-3. The Confederate Commissioners reach Washington.

March 4th. The United States Senate rejects the proposals of the Peace Convention.

15 22. *Abraham Lincoln*, by J. G. Nicolay and J. Hay, III, p. 332.

[President Lincoln's declaration of policy in his inaugural address, March 4th.]

. . . I therefore consider that, in view of the Constitution and the laws, the Union is unbroken; and
20 to the extent of my ability I shall take care, as the Constitution itself expressly enjoins upon me, that the laws of the Union be faithfully executed in all the States. Doing this I deem to be only a simple
25 duty on my part; and I shall perform it, so far as practicable, unless my rightful masters, the American people, shall withhold the requisite means, or in some authoritative manner direct the contrary. I trust this will not be regarded as a menace, but
30 only as the declared purpose of the Union that it *will* constitutionally defend and maintain itself.

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In doing this there needs to be no bloodshed or violence; and there shall be none, unless it be forced upon the national authority. The power confided to me will be used to hold, occupy, and possess the property and places belonging to the Government, and to collect the duties and imposts; but beyond what may be necessary for these objects, there will be no invasion, no using of force against or among the people anywhere. Where hostility to the United States, in any interior locality, shall be so great and universal as to prevent competent resident citizens from holding the Federal offices, there will be no attempt to force obnoxious strangers among the people for that object. While the strict legal right may exist in the Government to enforce the exercise of these offices, the attempt to do so would be so irritating, and so nearly impracticable withal, that I deem it better to forego for the time the uses of such offices.

The mails, unless repelled, will continue to be furnished in all parts of the Union. . . .

23. *Mr. Buchanan's Administration*, pp. 211-214.

[Joseph Holt continued to act as Secretary of War for a day or two until Simon Cameron was confirmed. March 5th he wrote President Lincoln with regard to the military situation.]

. . . An expedition has been quietly prepared and is ready to sail . . . on a few hours notice for transporting troops and supplies to Fort Sumter. . . . The

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expedition, however, is not upon a scale approaching the seemingly extravagant estimates of Major Anderson and Captain Foster, now offered for the first time, and for the disclosures of which the Government was wholly unprepared.

The declaration now made by the Major that he would not be willing to risk his reputation on an attempt to throw reënforcements into Charleston harbor, and with a view of holding possession of the same, with a force of less than twenty thousand good and well-disciplined men, takes the Department by surprise, as his previous correspondence contained no such intimation. . . .

24. *Abraham Lincoln*, by J. G. Nicolay and J. Hay, III, p. 380.

[From the diary of Edward Bates, Attorney-General in the Lincoln Cabinet, March 9-16.]

March 9, 1861, Saturday night. . . . A Cabinet council upon the state of the country. I was astonished to be informed that Fort Sumter, in Charleston harbor, must be evacuated, and that General Scott, General Totten, and Major Anderson concur in opinion, that as the place has but twenty-eight days' provision, it must be relieved, if at all, in that time; and that it will take a force of twenty thousand men at least, and a bloody battle, to relieve it! . . . Mr. Fox is anxious to risk his life in leading the relief, and Commodore Stringham seems equally confident of success.

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The naval men have convinced me fully that the thing can be done, and yet as the doing of it would be almost certain to begin the war, and as Charleston is of little importance as compared with the chief
5 points in the Gulf, I am willing to yield to the military counsel and evacuate Fort Sumter, at the same time strengthening the forts in the Gulf so as to look down opposition, and guarding the coast with all our naval power, if need be. so as to close any
10 port at pleasure.

And to this effect I gave the President my written opinion on the 16th of March.

March 12th. General Scott formally recommends the evacuation of Sumter. W. H. Seward, Secretary of State,
15 refuses an interview with the Confederate Commissioners.

25. *Rebellion Record*, Frank Moore, editor, I, docs. 426-428.

[Letter of Justice J. A. Campbell, of the Supreme Court, to Secretary of State W. H. Seward, dated April 13th. This reviews the activities of Campbell as intermediary between Seward and the Confederate Commissioners from March 14th to April 8th.]
20

SIR:—On the 15th March ult., I left with Judge
25 Crawford, one of the Commissioners of the Confederate States, a note in writing to the effect following:

'I feel entire confidence that Fort Sumter will be evacuated in the next ten days. And this measure

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is felt as imposing great responsibility on the administration.

'I feel entire confidence that no measure changing the existing status, prejudiciously to the Southern Confederate States, is at present contemplated.

'I feel an entire confidence that an immediate demand for an answer to the communication of the Commissioners will be productive of evil, and not of good. I do not believe that it ought at this time
10 to be pressed.'

The substance of this statement I communicated to you the same evening by letter. Five days elapsed, and I called with a telegram from Gen. Beauregard, to the effect that Sumter was not
15 evacuated, but that Major Anderson was at work making repairs.

The next day, after conversing with you, I communicated to Judge Crawford, in writing, that the failure to evacuate Sumter was not the result of bad
20 faith, but was attributable to causes consistent with the intention to fulfil the engagement; and that as regarded [Fort] Pickens, I should have notice of any design to alter the existing status there. Mr. Justice Nelson was present at these conversations, three in
25 number, and I submitted to him each of my written communications to Judge Crawford, and informed Judge C. that they had his (Judge Nelson's) sanction. I gave you, on the 22d March, a substantial copy of the statement I had made on the 15th.

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The 30th of March arrived, and at that time a telegram came from Gov. Pickens inquiring concerning Col. Lamon, whose visit to Charleston he supposed had a connection with the proposed evacuation of Fort Sumter.

I left that with you, and was to have an answer the following Monday, (1st April.) On the 1st of April I received from you the statement in writing, 'I am satisfied the Government will not undertake to supply Fort Sumter without giving notice to Gov. Pickens.' The words 'I am satisfied' were for me to use as expressive of confidence in the remainder of the declaration.

The proposition, as originally prepared, was, 'The President *may desire* to supply Sumter, but will not do so,' etc., and your verbal explanation was that you did not believe any such attempt would be made, and that there was no design to reinforce Sumter.

There was a departure here from the pledges of the previous month, but with the verbal explanation I did not consider it a matter then to complain of—I simply stated to you that I had that assurance previously.

On the 7th of April, I addressed you a letter on the subject of the alarm that the preparations by the Government had created, and asked you if the assurances I had given were well or ill founded. In respect to Sumter, your reply was, 'Faith as to

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Sumter, fully kept—wait and see.’ In the morning’s paper I read, ‘An authorized messenger from President Lincoln informed Gov. Pickens and Gen. Beauregard, that provisions will be sent to Fort Sumter peaceably, or *otherwise by force*.’

This was the 8th of April, at Charleston, the day following your last assurance, and is the evidence of the full faith I was invited to wait *for* and *see*. In the same paper I read that intercepted despatches disclose the fact that Mr. Fox, who had been allowed to visit Major Anderson, on the pledge that his purpose was pacific, employed his opportunity to devise a plan for supplying the fort by force, and that this plan had been adopted by the Washington Government, and was in process of execution.

My recollection of the date of Mr. Fox’s visit carries it to a day in March. I learn he is a near connection of a member of the Cabinet.

My connection with the Commissioners and yourself was superinduced by a conversation with Justice Wilson. He informed me of your strong disposition in favor of peace, and that you were oppressed with a demand of the Commissioners of the Confederate States for a reply to their first letter, and that you desired to avoid, if possible, at that time. I told him I might, perhaps, be of some service in arranging the difficulty. I came to your office entirely at his request, and without the knowledge of the Commissioners. Your depression was

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obvious to both Judge Nelson and myself. I was gratified at the character of the counsels you were desirous of pursuing, and much impressed with your observation that a civil war might be prevented by
5 the success of my mediation. You read a letter of Mr. Weed, to show how irksome and responsible the withdrawal of troops from Fort Sumter was. A portion of my communication to Judge Crawford on the 15th of March, was founded upon these re-
10 marks, and the pledge to evacuate Sumter is less forcible than the words you employed. Those words were, 'Before this letter reaches you, (a proposed letter by me to President Davis), Sumter will have been evacuated.'

15 The Commissioners who received those communications conclude they have been abused and overreached. The Montgomery Government hold the same opinion. . . .

20 March 15th. President Lincoln asks written opinions from his Cabinet on the advisability of provisioning Sumter, assuming it to be possible. Seward, Cameron, Welles, Smith and Bates advise against provisioning; Blair approves; Chase approves conditionally

26. *Genesis of the Civil War*, by S. W. Crawford,
25 pp. 349-353.

[Arguments against relieving Sumter as set forth by Secretary Seward in his reply to the President, March 15th.]

. . . If it were possible to peacefully provision

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Fort Sumter, of course I should answer that it would be both unwise and inhuman not to attempt it. But the facts of the case are known to be that the attempt must be made with the employment of a
5 military and marine force, which would provoke combat and probably initiate a civil war, which the Government of the United States would be committed to maintain through all changes to some definitive conclusion. . . . If it be indeed true that
10 pacification is necessary to prevent dismemberment of the Union, and civil war, or either of them, no patriot and lover of humanity could hesitate to surrender party for the higher interests of country and humanity.

15 Partly by design, partly by chance, this policy has been hitherto pursued by the late administration of the Federal Government and by the Republican party in its corporate action. It is by this policy, thus pursued, I think, that the progress of dismem-
20 berment has been arrested after the seven Gulf States had seceded and the border States yet remain, although they do so uneasily, in the Union.

It is to a perseverance in this policy for a short time longer, that I look as the only peaceful means
25 of assuring the continuance of Virginia, Maryland, North Carolina, Kentucky, Tennessee, Missouri and Arkansas, or most of those States, in the Union. It is through their good and patriotic offices, that I look to see the Union sentiment revived, and brought

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once more into activity in the seceding States, and through this agency, those States themselves returning into the Union. . . .

I may be asked whether I would in no case and
5 at no time advise force—whether I purpose to give up everything. I reply, no. I would not initiate a war to regain a useless and unnecessary position on the soil of the seceding States. I would not provoke war in any way *now*. I would resort to force
10 to protect the collection of the revenue, because that is a necessary as well as legitimate public object. Even then, it should be only a naval force that I would employ for that necessary purpose, while I would defer military action on land
15 until a case should arise where we would hold the defensive.

In that case, we should have the spirit of the country and the approval of mankind on our side. In the other, we should peril peace and union, be-
20 cause we had not the courage to practice prudence and moderation at the cost of temporary misapprehension. . . .

27. *Genesis of the Civil War*, by S. W. Crawford, p. 358.

25 [Arguments in favor of provisioning Sumter as stated in Postmaster-General Blair's letter to the President, March 15th.]

In reply to your interrogatory whether in my opinion it is wise to provision Fort Sumter under

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present circumstances, I submit the following consideration in favor of provisioning that fort.

The ambitious leaders of the late Democratic party have availed themselves of the disappointment attendant upon defeat in the late presidential election to found a military government in the seceding States.

To the connivance of the late administration, it is due alone that this rebellion has been enabled to attain its present proportions. . . .

It is obvious that rebellion was checked in 1833 by the promptitude of the President in taking measures which made it manifest that it could not be attempted with impunity, and that it has grown to its present formidable proportions only because similar measures were not taken.

The action of the President in 1833 inspired respect, whilst in 1860 the rebels were encouraged by the contempt they felt for the incumbent of the Presidency. . . .

28. *History of the United States*, by J. F. Rhodes, III, p. 333, note 3.

[About March 25th Ward Lamon, an intimate friend of the President, visited Charleston at Lincoln's request. April 1st the President sent word, through Seward to Campbell, that Lamon was not authorized to give any assurances for the Administration. Governor Pickens had understood differently, as appears from the fol-

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lowing letter printed in the *Charleston Courier*,
August 6, 1861.]

I know the fact from Mr. Lincoln's most intimate friend and accredited agent, Mr. Lamon, that the
5 President of the United States professed a desire to evacuate Fort Sumter, and he (Mr. Lamon) actually wrote me, after his return to Washington, that he would be back in a few days to aid in that purpose.

10 March 29th. Meeting of the Cabinet at which Seward and Smith oppose an attempt to provision Sumter, Chase, Welles and Blair favor it, and Bates is non-committal.

29. *Genesis of the Civil War*, by S. W. Crawford,
p. 365.

15 [Letter of Postmaster-General Blair to S. W. Crawford May 6, 1882, describing the decision made March 30, 1861, to provision Sumter.]

General Scott, in the belief that the surrender of Fort Sumter had been determined upon, wrote to
20 the President that it was necessary to surrender Fort Pickens also.

This letter was written on the day fixed for the final action on the question, whether Sumter should be surrendered. But contrary to the President's
25 previous intention, he did not decide the question at the Cabinet meeting that day. After dinner the President called the members out of the room where he had dined with them, and in an agitated manner read Scott's letter, which he seemed just to have

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received. An oppressive silence followed. At last I said, "Mr. President, you can now see that General Scott, in advising the surrender of Fort Sumter, is playing the part of a politician, not of a general, for as no one pretends that there is any military necessity for the surrender of Fort Pickens, which he now says it is equally necessary to surrender, it is believed that he is governed by political reasons in both recommendations."

10 No answer could be made to this point, and the President saw that he was misled, and immediately ordered the reinforcement of Fort Sumter. It is impossible to exaggerate the importance and merit of this act. It was an irrevocable decision that the
15 Union should be maintained by force of arms.¹

30. *Abraham Lincoln's Complete Works*, J. G.

Nicolay and J. Hay, editors, II, p. 56.

[President Lincoln's message to Congress, July 4, 1861, explaining his reasons for deciding to
20 attempt to provision Sumter.]

. . . It was believed, however, that so to abandon that position, under the circumstances, would be utterly ruinous; that the necessity under which it was to be done would not be fully understood; that
25 by many it would be construed as a part of a voluntary policy; that at home it would discourage the

¹ This was not a formal meeting of the Cabinet. There were present besides the President, Secretary Welles, Secretary Blair, Captain Fox of the Navy, and George Harrington, Assistant
30 Secretary of the Treasury.

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friends of the Union, embolden its adversaries, and go far to ensure to the latter a recognition abroad; that, in fact, it would be our national destruction consummated. This could not be allowed. Starvation was not yet upon the garrison, and ere it would be reached Fort Pickens ¹ might be reinforced. This last would be a clear indication of policy, and would better enable the country to accept the evacuation of Fort Sumter as a military necessity.

10 An order was at once directed to be sent for the landing of the troops from the steamship *Brooklyn* into Fort Pickens. This order could not go by land, but must take the longer and slower route by sea. The first return news from the order was received

15 just one week before the fall of Fort Sumter. The news itself was that the officer commanding the *Sabine*, to which vessel the troops had been transferred from the *Brooklyn*, acting upon some *quasi* armistice of the late administration (and of the

20 existence of which the present administration, up to the time the order was despatched, had only too vague and uncertain rumors to fix attention), had refused to land the troops. To now reinforce Fort Pickens before a crisis would be reached at Fort

25 Sumter was impossible—rendered so by the near

¹ At Pensacola, Florida. President Buchanan had sent reinforcements, but had ordered them to remain on board ship, and not to land unless the fort was attacked. This was at the request of the State authorities, who promised not to assault the fort so long as

30 the *status quo* was maintained.

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exhaustion of provisions in the latter-named fort. In precaution against such a conjuncture, the government had, a few days before, commenced preparing an expedition as well adapted as might be to relieve
5 Fort Sumter, which expedition was intended to be ultimately used, or not, according to circumstances. The strongest anticipated case for using it was now presented, and it was resolved to send it forward.
31. *Official Records*, Series I, Vol. I, pp. 301, 31, 12.
10 [Telegrams and reports connected with the attack on Fort Sumter and its surrender.]

CHARLESTON, *April 11, 1861.*

Hon. L. P. WALKER, Secretary of War:

Major Anderson replies: "I have the honor to
15 acknowledge the receipt of your communication demanding the evacuation of this fort, and to say in reply thereto that it is a demand with which I regret that my sense of honor and of my obligations to my Government prevent my compliance." He
20 says verbally: "I will await the first shot, and if you do not batter us to pieces we will be starved out in a few days."

Answer.

G. T. BEAUREGARD.

MONTGOMERY, *April 11, 1861.*

25 General BEAUREGARD, Charleston:

Do not desire needlessly to bombard Fort Sumter. If Major Anderson will state the time at which, as indicated by him, he will evacuate, and agree that

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in the mean time he will not use his guns against us unless ours should be employed against Fort Sumter, you are authorized thus to avoid the effusion of blood. If this or its equivalent be refused, reduce
5 the fort as your judgment decides to be most practicable
L. P. WALKER.

WASHINGTON, *April 11, 1861.*

General G. T. BEAUREGARD:

The Tribune of to-day declares the main object
10 of the expedition to be the relief of Sumter, and that a force will be landed which will overcome all opposition.

ROMAN
CRAWFORD
FORSYTH

15 CHARLESTON, S. C., *April 11, 1861.*

ROMAN, CRAWFORD and FORSYTH,

Commissioners Confederate States, Washington,
D. C.:

Evacuation of Fort Sumter will be demanded to-
20 day. If refused, hostilities will commence tonight.
Answer.
G. T. BEAUREGARD.

HEADQUARTERS PROVISIONAL ARMY,
CHARLESTON, S. C., *April 27, 1861.*

SIR: I have the honor to submit the following
25 detailed report of the bombardment and surrender of Fort Sumter and the incidents connected therewith: . . .

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At 11 p.m. I sent my aides with a communication to Major Anderson based on the foregoing instructions. It was placed in his hands at 12:45 a.m. 12th instant. He expressed his willingness to
5 evacuate the fort on Monday at noon if provided with the necessary means of transportation, and if he should not receive contradictory instructions from his Government or additional supplies, but he declined to agree not to open his guns upon us in the
10 event of any hostile demonstrations on our part against his flag. This reply, which was opened and shown to my aides, plainly indicated that if instructions should be received contrary to his purpose to evacuate, or if he should receive his supplies, or if
15 the Confederate troops should fire on hostile troops of the United States, or upon transports bearing the United States flag, containing men, munitions, and supplies designed for hostile operations against us, he would still feel himself bound to fire upon us, and
20 to hold possession of the fort.

As in consequence of a communication from the President of the United States to the governor of South Carolina, we were in momentary expectation of an attempt to re-enforce Fort Sumter, or of a
25 descent upon our coast to that end from the United States fleet then lying at the entrance of the harbor, it was manifestly an imperative necessity to reduce the fort as speedily as possible, and not to wait until the ships and the fort should unite in a

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combined attack upon us. Accordingly my aides, carrying out my instructions, promptly refused to accede to the terms proposed by Major Anderson, and notified him in writing that our batteries would
5 open upon Fort Sumter in one hour, . . .

G. T. BEAUREGARD,

Brigadier-General Commanding,

Brigadier-General COOPER,

Adjutant-General, C.S.A.

10

STEAMSHIP "BALTIC" OFF SANDY HOOK,
April 18, 1861—10:30 A.M.—via New York.

Having defended Fort Sumter for thirty-four hours, until the quarters were entirely burned, the main gates destroyed by fire, the gorge walls seriously
15 injured, the magazine surrounded by flames, and its door closed from the effects of heat, four barrels and three cartridges of powder only being available, and no provisions remaining but pork, I accepted the terms of evacuation offered by General Beauregard,
20 being the same offered by him on the 11th instant, prior to the commencement of hostilities, and marched out of the fort Sunday afternoon, the 14th instant, with colors flying and drums beating, bringing away company and private property, and
25 saluting my flag with fifty guns.

ROBERT ANDERSON,

Major, First Artillery, Commanding.

Hon. S. CAMERON,

Secretary of War, Washington.

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